

REVISION OF TITLE 64 OF THE CODE OF VIRGINIA

**REPORT OF THE
VIRGINIA CODE COMMISSION
to
THE GOVERNOR
and
THE GENERAL ASSEMBLY OF VIRGINIA**



**COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
RICHMOND
1967**

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REVISION OF TITLE 64 OF THE CODE OF VIRGINIA

REPORT OF
THE VIRGINIA CODE COMMISSION
TO
THE GOVERNOR AND THE GENERAL ASSEMBLY
OF VIRGINIA

Richmond, Virginia, June 12, 1967.

To:

HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

The General Assembly at its Regular Session of 1966 directed the Virginia Code Commission, by Chapter 315 of the Acts of that Session, to revise certain titles of the Code of Virginia, including Title 64, relating to wills and decedents' estates.

Extracts from Chapter 315 follow:

"§ 1. The Code of Virginia shall be gradually revised by revising one or more titles at a time. In revising each title, all other sections of the Code relating to the same subject matter shall be revised to the extent necessary. Experts shall be employed by the Virginia Code Commission to assist in the project. The Commission may also accept the services of qualified volunteers who are willing to serve without pay. Tentative drafts of proposed revisions shall be printed and circulated among interested persons and their comments solicited.

"§ 2. The Commission shall undertake the revision of Titles 59, 60, 61, 62, 63, 64 and 65 and submit to the Governor and the General Assembly on or before October one, nineteen hundred sixty-seven, a report of its recommendations, together with suggested legislation necessary to carry such recommendations into effect."

Robert P. Joyner, Esquire, of the Richmond City Bar, was retained as Counsel to assist in the revision of this Title.

Counsel examined the provisions of this Title in detail and conferred with persons having special interest and knowledge in the field. The Code Commission met with Counsel on several occasions, and discussed in detail changes recommended by members of the Commission, by Counsel and by such persons.

As a result of its efforts, the Commission considered it desirable that there be a general renumeration of the sections, the deletion of certain obsolete sections, and the amendment of other sections. We are of the opinion that this can be better accomplished by the repeal of Title 64 and the enactment of Title 64.1 in lieu thereof.

Included in this Report is the Report of Counsel to the Commission on Title 64. Also, following each section of the draft of Title 64.1 are Counsel's notes identifying the source of the provisions of the section and

commenting upon any changes therein. Furthermore, preceding the draft of Title 64.1 there is set forth a table of comparable sections, for the purpose of tracing each of the provisions of Title 64 into proposed Title 64.1. This table also indicates those sections of Title 64 which have been deleted. Those who are interested in the major features of the Revision should read the Report of Counsel and the notes following the several sections of Title 64.1, to which reference is hereby made.

RECOMMENDATIONS

The Code Commission submits this Report, and recommends that the Legislature enact the attached bills in 1968.

The Commission wishes to express appreciation for the valuable assistance rendered by Counsel in the preparation of this Revision, and for the cooperation of those interested persons who gave their time in conferring with Counsel.

Respectfully submitted,

JAMES M. THOMSON, *Chairman*
E. ALMER AMES, JR., *Vice-Chairman*
FRED W. BATEMAN
JOHN WINGO KNOWLES
G. M. LAPSLEY
A. L. PHILPOTT

Kenneth C. Patty, formerly a member of the Virginia Code Commission, died on March 27, 1967.

March 24, 1967.

The Honorable James M. Thomson
The Honorable Fred W. Bateman
The Honorable John Wingo Knowles
The Honorable E. Almer Ames, Jr.
The Honorable A. L. Philpott
The Honorable G. M. Lapsley
The Honorable Kenneth C. Patty
Virginia Code Commission
State Capitol
Richmond, Virginia

Gentlemen:

Pursuant to your instructions I have made a review of Title 64 of the Code of Virginia and herewith tender my recommendations with respect to the revision thereof. Title 64 in its present status is the result of being slowly amended over a number of years and, as a result, this revision has involved primarily deletion of obsolete sections and the revision of other sections to bring them up to date. Wherever possible separate sections which pertained to the same subject matter have been combined into one section.

Chapter 1 contains few substantive revisions except that the limitation upon alien enemies taking as an heir at law has been removed in Section 64-1. In Section 64-9 the surviving spouse and parents have been included as heirs of an infant who inherits real estate and thereafter dies in infancy.

Chapter 2. The dower and curtesy sections have been combined as have Sections 64-24 and 64-35 which provided that desertion would bar dower or curtesy. Sections 64-30 and 64-36 have been amended to give the husband certain marital rights equal to those enjoyed by the wife.

Chapter 3. Section 64-63 has been amended to give the children of the testator the benefit of certain presumptions which are now enjoyed by other kindred. Sections 64-91 and 64-92 have been amended to protect a bona fide purchaser over an infant or person of unsound mind.

Chapters 4 and 5 contain no substantive changes.

Chapter 6. Section 64-139 has been amended to validate conveyances of real estate by a foreign executor before June 30, 1960. From that date forward ancillary administration is required. There are no other substantive changes in Chapter 6 nor in Chapter 7.

There are three recommendations for amendments to Title 26. The first is a proposed new Section 26-30.1, which would establish a maximum fee schedule for personal representatives. The second is a proposed amendment to Section 26-34 to relieve personal representatives of further duties under certain circumstances when the assets of the estate do not exceed fifty thousand dollars. The third is a form for the final accounting by a fiduciary. A new section, 58-46.1, has also been recommended to allow the State Tax Commissioner to make a copy of the Inheritance Tax Return available to any person with a pecuniary interest in the estate. A table of comparable sections has been attached for your convenience.

Respectfully submitted,

ROBERT P. JOYNER

Counsel

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A BILL to revise, rearrange, amend and recodify the general laws of Virginia relating to wills and decedents' estates; to that end to repeal Title 64 of the Code of Virginia, which title includes Chapters 1 to 7 and §§ 64-1 to 64-176, inclusive, of the Code of Virginia, as amended, which title relates to wills and decedents' estates; to amend the Code of Virginia by adding thereto in lieu of the foregoing title, chapters and sections of the Code repealed by this act a new title numbered 64.1, which title includes new chapters numbered 1 to 7, both inclusive, and new sections numbered 64.1-1 to 64.1-187, both inclusive, relating to wills and decedents' estates; and to prescribe when such revision and recodification shall become effective.

Be it enacted by the General Assembly of Virginia:

1. That Title 64 of the Code of Virginia, which title includes chapters 1 to 7 and §§ 64-1 to 64-176, inclusive, of the Code of Virginia, as amended, is repealed.
2. That the Code of Virginia be amended by adding thereto, in lieu of the title, chapters and sections of the Code of Virginia herein repealed, a new title numbered 64.1, new chapters numbered 1 to 7, inclusive, and new sections numbered 64.1-1 to 64.1-187, inclusive, which new title, chapters and sections are as follows:

Title 64.1

WILLS AND DECEDENTS' ESTATES

CHAPTER 1.

DESCENT AND DISTRIBUTION.

§ 64.1-1. **Course of descents generally.**—When any person having title to any real estate of inheritance shall die intestate as to such estate, it shall descend and pass in parcenary to such of his kindred, male and female, in the following course:

First. To his children and their descendants.

Second. If there be no child, nor the descendant of any child, then the whole shall go the surviving consort of the intestate.

Third. If there be none such, then to his or her father and mother or the survivor.

Fourth. If there be none such, then to his or her brothers and sisters, and their descendants.

Fifth. If there be none such, then one moiety shall go to the paternal, the other to the maternal kindred, of the intestate, in the following course:

Sixth. First to the grandfather and grandmother or the survivor.

Seventh. If there be none, then to the uncles and aunts, and their descendants.

Eighth. If there be none such, then to the great grandfathers or great grandfather, and great grandmothers or great grandmother.

Ninth. If there be none, then to the brothers and sisters of the grandfathers and grandmothers, and their descendants.

Tenth. And so on, in other cases, without end, passing to the nearest lineal ancestors, and the descendants of such ancestors.

Eleventh. If there be no paternal kindred the whole shall go to the maternal kindred; and if there be no maternal kindred, the whole shall go to the paternal kindred. If there be neither maternal nor paternal kindred, the whole shall go to the kindred of the husband or wife, in the like course as if such husband or wife had died entitled to the estate.

Source: § 64-1.

Note: The qualification that heirs at law not be alien enemies has been deleted.

§ 64.1-2. **How collaterals of half blood inherit.**—Collaterals of the half blood shall inherit only half so much as those of the whole blood; but if all the collaterals be of the half blood, the ascending kindred, if any, shall have double portions.

Source: § 64-2.

Note: No change.

§ 64.1-3. **When parties take per capita and when per stirpes.**—Whenever those entitled to partition are all in the same degree of kindred to the intestate, they shall take per capita or by persons; and when, a part of them being dead and a part living, the issue of those dead have right to partition, such issue shall take per stirpes or by stocks, that is to say, the shares of their deceased parents.

Source: § 64-3.

Note: No change.

§ 64.1-4. **When alienage of ancestor not to bar.**—In making title by descent, it shall be no bar to a party that any ancestor, whether living or dead, through whom he derives his descent from the intestate, is or has been an alien.

Source: § 64-4.

Note: No change.

§ 64.1-5. **When illegitimate children take.**—Illegitimate children shall be capable of inheriting and transmitting inheritance on the part of their mothers as if lawfully begotten.

Source: § 64-5.

Note: The reference to children of slaves has been deleted. The reference to "bastards" has been amended to "illegitimate children."

§ 64.1-6. **When marriage legitimates children.**—If a man, having had a child or children by a woman, shall afterwards intermarry with her, such child or children, or their descendants, if generally acknowledged by him as his own child or children before or after marriage, shall be deemed legitimate.

Source: § 64-6.

Note: The words "generally acknowledged" are substituted for "recognized" and the words "as his own child or children" are added.

§ 64.1-7. **Issue legitimate though marriage null.**—The issue of marriages deemed null in law, or dissolved by a court, shall nevertheless be legitimate.

Source: § 64-7.

Note: No change.

§ 64.1-8. How posthumous children take.—Any person en ventre sa mere, who may be born in ten months after the death of the intestate, shall be capable of taking by inheritance in the same manner as if he were in being at the time of such death.

Source: § 64-8.

Note: No change.

§ 64.1-9. Descents from infants in certain cases.—If an infant die without an heir in the first three classes of descendants under § 64.1-1, having title to real estate derived by gift, devise or descent from one of his parents, the whole of it shall descend and pass to his kindred on the side of that parent from whom it was derived if any such kindred be living at the death of the infant. If there be none such, then it shall descend and pass to his kindred on the side of the other parent.

Source: § 64-9.

Note: The words “an heir in the first three classes of descendants under § 64.1-1” have been substituted for the word “issue” in the second line.

§ 64.1-10. Right of entry not affected by descent cast.—The right of entry on or action for land shall not be tolled or defeated by descent cast.

Source: § 64-10.

Note: No change.

§ 64.1-11. Distribution of personal estate.—When any person shall die intestate as to his personal estate or any part thereof, the surplus (subject to the provisions of Title 34) after payment of funeral expenses, charges of administration and debts, shall pass and be distributed to and among the same persons, and in the same proportions, to whom and in which real estate is directed to descend, except as follows:

(1) *Infants.*—The personal estate of an infant shall be distributed as if he were an adult.

(2) *Married persons.*—If the intestate was married, the surviving husband or wife shall be entitled to one-third of such surplus, if the intestate left surviving children or their descendants (a) of the marriage which was dissolved by the death of the intestate, (b) of a former marriage, (c) by legal adoption, or (d) though such children were illegitimate, if the intestate was a wife; but if no such children or their descendants survive, the surviving husband or wife shall be entitled to the whole of such surplus.

Source: § 64-11.

Note: No change.

§ 64.1-12. Right of State, if no other distributee.—To the Commonwealth shall accrue all the personal estate of every decedent, of which there is no other distributee.

Source: § 64-12.

Note: No change.

§ 64.1-13. When and how benefits of will may be renounced.—When any provision for a husband or wife is made in the consort's will, the survivor may, within one year from the time of the admission of the will to probate, renounce the provision. The renunciation shall be made either in person before the court in which the will is recorded, or by writing re-

corded in the court, or the clerk's office thereof, upon such acknowledgment or proof as would authorize a writing to be admitted to record under chapter 6 of Title 55.

Source: § 64-13.

Note: No change.

§ 64.1-14. Extension of time until after determination of suit for construction of will.—If the will is of doubtful import as to the amount or value of the property the husband or wife of the testator is to receive thereunder and a suit in equity is pending wherein it will be construed in that respect, the court in which the suit is pending shall, within the year, on the application of the surviving husband or wife, enter an order extending the time within which the survivor is to make renunciation for such additional period beyond the year as will allow the survivor reasonable time, not exceeding six months, for making the renunciation after a final order has been entered in the suit construing the will in such respect, either by a trial court or any appellate court to which it is appealed.

Source: § 64-14.

Note: No change.

§ 64.1-15. Institution of such suit after expiration of year.—The survivor shall have the right, within six months after the expiration of the year, whether heretofore or hereafter, to institute and maintain a suit for the proper construction of the will, and in the suit, upon application of the surviving consort, the court shall, by an order entered therein, provide that the surviving consort shall be allowed not exceeding one month for renunciation after final decree has been entered in the suit construing the will.

Source: § 64-15.

Note: No change.

§ 64.1-16. Rights upon renunciation or when no provision made by will.—If renunciation be made, or if no provision for the surviving husband or wife be made in the will of the decedent, the surviving consort shall, if the decedent left surviving any direct descendants or a legally adopted child, or descendants of any deceased adopted child, have one-third of the surplus of the decedent's personal estate mentioned in § 64.1-11; or if no direct descendants or adopted child of the testator, or descendants of a deceased adopted child, survive, the surviving consort shall have one-half of such surplus; otherwise the surviving consort shall have no more of the surplus than is given him or her by the will.

Source: § 64-16.

Note: No change.

§ 64.1-17. In division of estate of intestate, advancements to be brought into hotchpot.—When any descendant of a person dying intestate as to his estate, or any part thereof, shall have received from such intestate in his lifetime, or under his will, any estate, real or personal, by way of advancement, and he, or any descendant of his, shall come into the partition and distribution of the estate with the other parceners and distributees, such advancement shall be brought into hotchpot with the whole estate, real and personal, descended or distributable, and thereupon such party shall be entitled to his proper portion of the estate, real and personal.

Source: § 64-17.

Note: No change.

§ 64.1-18. When homicide to bar acquisition of estate or proceeds of life insurance policy.—No person shall acquire by descent or distribution or by will any interest in the estate of another, nor receive any payment under any policy of life insurance upon the life of another, for whose death such person has been convicted of murder. In such event should any life insurance be payable, then it shall be paid as if such person predeceased the insured to such other person as may be named in the policy, or, if no such other person is named, then to the estate of the insured. Any insurer making payment according to the terms of its policy or contract shall not be subjected to additional liability by the terms of this section if such payment is made without notice of circumstances bringing it within the provisions of this section.

Source: § 64-18.

Note: No change.

CHAPTER 2.

CURTESY, DOWER AND JOINTURE.

§ 64.1-19. Dower or curtesy of a surviving spouse.—A surviving spouse shall be entitled to a dower or curtesy interest in one-third of all the real estate whereof the deceased spouse was at any time seized of an estate of inheritance, unless such right shall have been lawfully barred or relinquished.

Source: §§ 64-20 and 64-27.

Note: This section combines the former dower and curtesy sections and recognizes the surviving spouse in the second class under § 64.1-1.

§ 64.1-20. Certain facts not to bar curtesy.—The fact that the husband conveyed, or caused to be conveyed, the real estate to the wife, or to her use, shall not bar his curtesy therein, nor shall it be a requisite to curtesy that the wife shall have had a child born alive during the coverture; and when a wife, or any other to her use, shall have been entitled to a right of entry or action in any land, and her surviving husband would be entitled to curtesy in the same if the wife or such other had recovered possession thereof, he shall be entitled to such curtesy, although there shall have been no such recovery of possession.

Source: § 64-21.

Note: No change.

§ 64.1-21. When no curtesy in separate estate.—A surviving spouse shall not be entitled to dower or curtesy in the equitable separate estate of the deceased spouse if such right thereto has been expressly excluded by the instrument creating the same.

Source: § 64-22.

Note: Section is amended to apply to dower as well as curtesy.

§ 64.1-22. When devise or bequest shall bar curtesy; right of husband to renounce such provisions.—If any estate, real or personal, intended to be in lieu of curtesy, shall be devised or bequeathed for the curtesy of the husband, such devise or bequest shall bar his curtesy of the real estate, or the residue thereof, and every such devise or bequest by will shall be taken to be intended in lieu of curtesy unless the contrary intention plainly appear in such will or in some other writing signed by the party making

the provision. But the husband may renounce such provision in the manner and form prescribed in §§ 64.1-13 to 64.1-15 upon which renunciation the husband shall be entitled to curtesy in the estate of his wife, as is provided in § 64.1-19.

Source: § 64-23.

Note: Internal section references have been conformed.

§ 64.1-23. **Curtesy or dower barred by desertion.**—If a husband or wife desert or abandon his or her consort and such desertion or abandonment continues until the death of the consort, the party who deserted the deceased consort shall be barred of all interest in the estate of the other as a tenant by dower, tenant by the curtesy, distributee or heir.

Source: §§ 64-24 and 64-35.

Note: This section combines the two former sections and substitutes the word "heir" for the word "otherwise" in the last line. Also, the word "wilfully," formerly appearing before the word "desert" in the second line, has been deleted.

§ 64.1-24. **Assignment of curtesy.**—If the surviving husband be not entitled to an estate by the curtesy in the whole estate, a court of equity, on bill filed by him, his guardian or committee, shall have jurisdiction to assign curtesy in any case when any of the parties interested are under disability or for any other reason no agreement between them can be made or reached. Curtesy may also be assigned or recovered in the same manner and by similar proceedings provided for the assignment or recovery of dower by §§ 64.1-34, 64.1-35, 64.1-36, 64.1-37, and 64.1-38, provided that §§ 64.1-37 and 64.1-38, as applied to this section, shall be subject to this qualification, that on the application of a person claiming under an alienation made under decree of court, or by the wife in her lifetime, a court of equity may grant such applicant relief from such recovery on terms of his paying to the husband during life lawful interest from the commencement of his suit on the value, at the time of the wife's death, of such proportional part of the real estate so aliened as the husband would be entitled to have for his life, as tenant by the curtesy, deducting the value of such permanent improvements then existing on such real estate as may have been made after the alienation by the alienee or his assigns.

Source: § 64-25.

Note: Internal section references have been conformed.

§ 64.1-25. **How, when it cannot be laid off in kind.**—In a suit in equity brought by a surviving husband or any other person to have curtesy assigned, if it shall appear to the satisfaction of the court, from the report of commissioners, or otherwise, that curtesy cannot be laid off in kind, the court may make a decree requiring the heirs at law, devisees or creditors of the deceased wife, who may be entitled to the real estate subject to such curtesy, or their assigns, to pay to the husband during his life and in such instalments and on such terms as the court may deem proper, what may be ascertained, by proper inquiry, to be the fair net annual value of such proportional part of such real estate as he would be entitled to have for his life, as tenant by the curtesy, such net annual value to constitute a lien on all of such real estate, which may be enforced, in case of default, in the same suit, or in an independent suit brought for the purpose; provided that the court may, from time to time, upon the application of any interested party, of which all other parties in interest shall be given reasonable notice, change and adjust such fair net annual value to conform to the true conditions as of the time of the application; provided, further, that the person so required to pay such net annual value

may, at his further election, turn over and deliver the possession of such real estate in its entirety to a receiver, to be appointed by the court, who shall rent out the same and from the rentals received by him pay, first the taxes, reasonable insurance premiums and repairs on the property, and the balance to such person and to such surviving husband, in the proportion in which such person and such surviving husband are interested in such real estate.

Source: § 64-26.

Note: No change.

§ 64.1-26. Right of dower, when husband had right of entry or action.—When a husband, or any other to his use, shall have been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same, if the husband or such other had recovered possession thereof, she shall be entitled to such dower, although there shall have been no such recovery of possession.

Source: § 64-28.

Note: No change.

§ 64.1-27. Widow, or infant heirs, not affected by judgment by default or collusion.—No widow shall be precluded from her dower by reason of the real estate whereof she claims dower having been recovered from her husband by a judgment rendered by default or collusion, if she would have been entitled to dower therein had there been no such judgment; nor shall any heir who was under the age of twenty-one years at the time dower was assigned to the widow out of the lands of his ancestor by his guardian, or by judgment by default or collusion against such guardian, be precluded from recovering the seisin of his ancestor from such widow, unless she show herself entitled to such dower.

Source: § 64-29.

Note: No change.

§ 64.1-28. Surviving consort entitled to dower or curtesy in surplus after lien satisfied.—When land is sold in the lifetime of one spouse to satisfy a lien or encumbrance thereon, created by deed in which the surviving spouse has united, or otherwise paramount to the surviving spouse, there shall be no right of curtesy or dower in such land. But if a surplus of the proceeds of sale remain after satisfying the lien or encumbrance the surviving spouse shall be entitled to a dower or curtesy interest in such surplus.

Source: § 64-30.

Note: Section amended to give surviving husband an equal curtesy interest with a surviving wife in the surplus.

§ 64.1-29. Jointure in bar of dower; effect of conveyance or devise.—If any estate, real or personal, intended to be in lieu of dower, shall be conveyed or devised for the jointure of the wife, to take effect in profit or possession immediately upon the death of her husband and continue during her life at least, such conveyance or devise shall bar her dower of the real estate, or the residue thereof, and every such provision, by deed or will, shall be taken to be intended in lieu of dower unless the contrary intention plainly appear in such deed or will or in some other writing signed by the party making the provision.

Source: § 64-31.

Note: No change.

§ 64.1-30. Election of widow to waive jointure and demand dower.—But if such conveyance or devise were before the marriage, without the assent in writing or during the infancy of the female, or if it were after marriage, in either case, the widow may, at her election, waive such jointure and demand her dower. Such election shall be made within one year after the death of the husband or within one year after the admission of his will to probate when the provision is by will and shall be made in any court of record in the county or corporation in which the husband resided at the time of his death, or in the clerk's office of which the instrument creating the jointure is recorded, or by a writing recorded in such court, or in the clerk's office thereof, upon such acknowledgment or proof as would authorize a writing to be admitted to record under chapter 6 of Title 55; and when she shall elect and receive her dower, the estate so conveyed or devised to her shall cease and determine.

Source: § 64-32.

Note: No change.

§ 64.1-31. Extension of time until after determination of suit for construction of instrument.—If any such conveyance or will is of doubtful import as to the amount or value of the property the widow is to receive thereby or thereunder and a suit in equity is pending wherein the conveyance or will will be construed in such respect, the court in which the suit is pending shall, within such year, on the application of the widow if she so desires, enter an order extending the time within which she is to make election for such additional period beyond such year as will allow the widow a reasonable time, not exceeding six months, for making such election after a final order shall have been entered in the suit construing such conveyance or will in such respect, either by a trial court or any appellate court to which it may be appealed. The widow may, within such year, herself institute and maintain any such suit for the proper construction of the conveyance or will in such respect.

Source: § 64-33.

Note: No change.

§ 64.1-32. Dower when widow deprived of jointure.—If a widow be lawfully deprived of her jointure, or any part thereof, she shall be endowed of so much of the real estate whereof, but for such jointure, she would have been dowable, as is equal in value to that of which she was deprived.

Source: § 64-34.

Note: No change.

§ 64.1-33. What a surviving spouse entitled to until dower or curtesy is assigned.—Until dower or curtesy is assigned, the surviving spouse may hold, occupy and enjoy the mansion house and curtilage without charge for rent, repairs, taxes or insurance, and, in the meantime, such surviving spouse shall be entitled to demand of the heirs, devisees, or alienees, one-third part of the issues and profits of the other real estate which descended or was devised or passed to them of which such spouse has a dower or curtesy interest after deducting the cost of necessary repairs, taxes and insurance. If such surviving spouse be deprived of the mansion house and curtilage, he or she may on complaint of unlawful entry or detainer, recover the possession thereof, with damages for the time possession was denied; but nothing in this section shall be construed to impair

the right or delay the enforcement thereof of any State, City or County for the taxes assessed upon the property.

Source: § 64-36.

Note: This section changed to extend the widow's right of quarantine to the surviving husband.

§ 64.1-34. How dower may be assigned.—Dower may be assigned as at common law; or upon the motion of the widow, heirs, devisees or alienees, or any of them, the court in which or in the clerk's office of which the will of the husband is admitted to record or administration of his estate is granted or the conveyance of the alienee is recorded may appoint commissioners by whom the dower may be assigned and the assignment, when confirmed by the court, shall have the same effect as if made by the heir at common law; but nothing herein contained shall be construed to take away or affect the jurisdiction which courts of chancery now exercise on the subject of dower.

Source: § 64-37.

Note: No change.

§ 64.1-35. How, when it cannot be laid off in kind.—In a suit in equity brought by a widow or any other person, for the purpose of having dower assigned, if it shall appear to the satisfaction of the court, from the report of commissioners, or otherwise, that dower cannot be laid off in kind, the court may make a decree requiring the heirs at law, devisees or creditors of the deceased husband, who may be entitled to the real estate subject to such dower, or their assigns, to pay to the widow during her life and on such terms and in such instalments as the court may deem proper, what may be ascertained, by proper inquiry, to be the fair net annual value of such proportional part of the real estate as she would be entitled to have for her life, as tenant in dower, such net annual value to constitute a lien on all of the real estate, enforceable in case of default in payment, in the same suit, or in an independent suit brought for the purpose; provided that the court may, from time to time, upon the application of any interested party, of which all other parties in interest shall be given reasonable notice, change and adjust such fair net annual value to conform to the true conditions as of the time of the application; provided, further, that the person so required to pay such net annual value, may, at his further election, turn over and deliver the possession of such real estate in its entirety to a receiver to be appointed by the court, who shall rent out the same and from the rentals received by him pay, first, the taxes, reasonable insurance premiums and repairs on property, and the balance to such person, and to such widow in the proportion in which such person and such widow are interested in such real estate.

Source: § 64-38.

Note: No change.

§ 64.1-36. When dower may be commuted and paid.—In lieu of having her dower assigned, a widow having a vested right of dower in real property, may, where it appears that her dower cannot be conveniently laid off and assigned in kind, petition the court to commute the same. In such event the court may, in its discretion, either require the heirs at law to pay to such widow a gross sum in lieu of dower, determined as provided in article 2 (§ 55-269 et seq.) of chapter 15 of Title 55 of this Code; or may, if such heirs fail or refuse to make such payment, have such real property sold. From the proceeds of such sale there shall be paid, first, the

gross sum equivalent of the widow's dower interest; the remainder of such proceeds shall be paid to the heirs at law, pro rata, according to their interest in such real property.

Source: § 64-38.1.

Note: No change.

§ 64.1-37. **How recovered with damages.**—A widow having a right of dower in any real estate may recover such dower and damages for its being withheld by such remedy at law as would lie on behalf of a tenant for life having a right of entry, or by a bill in equity, when the case is such that a bill would now lie for such dower.

Source: § 64-39.

Note: No change.

§ 64.1-38. **Amount of recovery in kind; damages for withholding.**—Whether the proceedings of the widow be against one claiming under an alienation made under a decree of court, or by the husband, in his lifetime, or against his heirs or devisees, or their assigns, a recovery of dower in such real estate in kind shall be of a third of the estate, as it is when the recovery is had. Against such heirs or devisees, or their assigns, the damages shall be for such time after the husband's death as they have withheld the dower, not exceeding five years before the suit is commenced. Against one claiming under such alienation made under decree, or by the husband, in his lifetime, the damages shall be from the commencement of the suit against such claimant. In either case, they shall be to the time of the recovery. And if, after suit is brought, the widow or the tenant die before such recovery of damages, the same may be recovered by her personal representative or against his.

Source: § 64-40.

Note: No change.

§ 64.1-39. **Relief of alienees.**—The two preceding sections are subject to this qualification, that on the application of one claiming under an alienation made under decree of court, or by the husband, in his lifetime, a court of equity may grant him relief from such recovery on the terms of his paying to the widow, during her life, lawful interest from the commencement of her suit on one-third of the value, at the husband's death, of the real estate so aliened, deducting the value of such permanent improvements then existing as may have been made after the alienation by the alienee or his assigns.

Source: § 64-41.

Note: No change.

§ 64.1-40. **Right of dowers in crops growing at her death.**—Crops growing on the dower land of a widow at the time of her death may be bequeathed by her, and shall go to her personal representative, in like manner as crops growing on any other land held for life.

Source: § 64-42.

Note: No change.

§ 64.1-41. **Curtesy and dower of trust estate.**—When a person to whose use or in trust for whose benefit another is seized of real estate has such inheritance in the use or trust as, if it were a legal right, would en-

title such person's husband or wife to curtesy or dower thereof, such husband or wife shall have curtesy or dower of such estate.

Source: § 64-43.

Note: No change.

§ 64.1-42. Subjecting curtesy and dower to satisfaction of lien.—

The curtesy interest of a surviving husband, or the dower interest of a widow, in real estate of which the deceased spouse died seized, may be subjected to sale for the satisfaction of any valid lien thereon, by suit in equity brought by any lien creditor.

Source: § 64-44.

Note: No change.

§ 64.1-43. Creditor may have curtesy or dower assigned.—In the event such curtesy or dower interest shall be an estate for the life of the surviving husband, or widow, as the case may be, in less than the whole of such real estate, the complainant shall be entitled to have the curtesy, or dower, laid off in kind, by commissioners appointed for the purpose, and an estate for the life of the husband, or wife, as the case may be, in the part so laid off, subjected to sale.

Source: § 64-45.

Note: No change.

§ 64.1-44. Procedure when it cannot be assigned in kind.—If it shall appear to the satisfaction of the court, from the report of commissioners, or otherwise, that such curtesy or dower, as the case may be, cannot be laid off in kind, the same may be subjected for the aforesaid purpose by the court making a decree requiring the heirs at law, or devisees, of the deceased spouse, who may be entitled to the real estate subject to such curtesy or dower, to pay to a receiver to be appointed for the purpose, after he shall have executed such bond as the court may require, in such instalments and upon such terms as the court may deem proper, what may be ascertained, by proper inquiry, to be the fair net annual value of such proportional part of the real estate as the husband or wife, as the case may be, would be entitled to have for his or her life as tenant by the curtesy or in dower, for such a period of time, within the life of the husband or wife, as may be necessary to discharge in the order of priority the liens which may be established in the cause against such curtesy or dower interest. The person so required to pay such net annual value may, at his election, pay in a lump sum, which shall be applied to liens established in the order of their priority, the commuted value of an annuity equal to the ascertained fair net annual value of such curtesy or dower interest for the life of the surviving husband or wife, as the case may be. In such event, if such commuted value be more than sufficient to discharge the liens established as aforesaid, the surplus shall be paid to the husband or wife, as the case may be. Or the person so required to pay such net annual value may, at his further election, turn over and deliver the possession of such real estate in its entirety to the receiver who shall rent out the same and from the rentals received by him pay, first the taxes, reasonable insurance premiums and repairs on the property, and the balance to such person, and to the lienors in the proportion in which such person and such surviving husband or widow are interested in such real estate.

Source: § 64-46.

Note: No change.

CHAPTER 3.
WILLS.

Article 1.

Requisites and Execution.

§ 64.1-45. **Construction of word “will”.**—Except when it would be inconsistent with the manifest intent of the legislature, the word “will” shall extend to a testament, and to a codicil, and to an appointment by will, or by writing in the nature of a will, in exercise of a power; and also to any other testamentary disposition.

Source: § 64-47.

Note: No change.

§ 64.1-46. **Who may make a will; what estate may be disposed of.**—Every person not prohibited by the following section may, by will, dispose of any estate to which he shall be entitled, at his death, and which, if not so disposed of, would devolve upon his heirs, personal representative or next of kin. The power hereby given shall extend to any estate, right or interest to which the testator may be entitled at his death, notwithstanding he may become so entitled subsequently to the execution of the will.

Source: § 64-48.

Note: No change.

§ 64.1-47. **Who may not make a will; exception.**—No person of unsound mind or under the age of twenty-one years shall be capable of making a will, except that minors eighteen years of age or upwards may, by will, dispose of personal estate.

Source: § 64-49.

Note: No change.

§ 64.1-48. **Advertisements to draw wills prohibited.**—No person, firm or corporation shall advertise in any newspaper any offer, direct or indirect, to draw any will or have any will drawn.

Any violation of this section shall constitute a misdemeanor and be punished by a fine not exceeding five hundred dollars.

Source: § 64-50.

Note: No change.

§ 64.1-49. **Will must be in writing, etc.; mode of execution; witnesses, and proof of handwriting.**—No will shall be valid unless it be in writing and signed by the testator, or by some other person in his presence and by his direction, in such manner as to make it manifest that the name is intended as a signature; and moreover, unless it be wholly in the handwriting of the testator, the signature shall be made or the will acknowledged by him in the presence of at least two competent witnesses, present at the same time; and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary. If the will be wholly in the handwriting of the testator that fact shall be proved by at least two disinterested witnesses.

Source: § 64-51.

Note: No change.

§ 64.1-50. When execution of appointment by will valid.—No appointment made by will, in exercise of any power, shall be valid unless the same be so executed that it would be valid for the disposition of the property to which the power applies, if it belonged to the testator; and every will so executed shall be a valid execution of a power of appointment by will, notwithstanding the instrument creating the power expressly require that a will made in execution of such power shall be executed with some additional or other form of execution or solemnity.

Source: § 64-52.

Note: No change.

§ 64.1-51. Interested persons as competent witnesses.—No person shall be incompetent to testify for or against the will solely by reason of any interest in the will.

Source: §§ 64-53 and 64-54.

Note: This section combines the two former sections and broadens the scope of the section to include any person with an interest in the will.

§ 64.1-52. Reserved.

§ 64.1-53. Will of personal estate of soldiers, etc., and non-residents.—Notwithstanding the provisions of §§ 64.1-49 and 64.1-50, a soldier being in actual military service, or a mariner or seaman being at sea, may dispose of his personal estate as he might heretofore have done; and the will of a person domiciled out of this State at the time of his death shall be valid as to personal property in this State, if it be executed according to the law of the State or country in which he was so domiciled.

Source: § 64-55.

Note: No change.

§ 64.1-54. Presumption of formal execution of wills made by persons in military service.—A testamentary paper executed before or after October first, nineteen hundred and forty by a person in the military service of the United States as defined by the Soldiers' and Sailors' Relief Act of nineteen hundred forty, while in such service, purporting on its face to be witnessed as required by § 64.1-49, upon proof of the signature of the testator by any two disinterested witnesses, shall be presumed, in the absence of evidence to the contrary, to have been executed in accordance with the requirements of that section and shall be admitted to probate in like manner and with like effect as if the formalities of execution were duly and regularly proved.

Source: § 64-56.

Note: No change.

§ 64.1-55. Validation of holographic wills.—The probate of all holographic wills admitted to probate in this State prior to March twentieth, nineteen hundred and twenty-two, the handwriting of which was proved by one witness instead of two is validated and made as binding and effectual as if such wills had been proved according to § 5229 of the Code of 1919.

Source: § 64-57.

Note: No change.

§ 64.1-56. Wills of living persons lodged for safekeeping with clerks of certain courts.—Any person or his attorney for him may, during his lifetime, lodge for safekeeping with the clerk of a court having pro-

hate jurisdiction in the county or city of his residence any will executed by such person; and the clerk shall thereupon receive such will and give the person lodging it a receipt therefor. The clerk shall then place the will in an envelope and seal it securely, numbering the envelope and endorsing thereon the name of the testator and the date on which it is so lodged, and shall index the same alphabetically in a permanent index kept for the purpose, showing therein the number and date such will is so deposited. The fee for such lodging, indexing and preserving shall be two dollars, which shall be paid to the clerk when the will is received.

Any attorney at law may, upon holding a will lodged with him for safekeeping by a client for seven years or more, and having no knowledge of whether the said client is alive or dead after such time, lodge such will with the clerk as provided in the preceding paragraph for which the clerk shall be paid two dollars for such lodging, indexing and preserving.

The clerk shall carefully preserve the envelope containing the will unopened until it is returned to the testator or his nominee in his lifetime upon his request in writing therefor or until the death of the testator. Should such will be returned in the testator's lifetime as hereinbefore provided and later returned to the clerk it shall be considered as a separate lodging under the provisions of this section.

Upon notice of the testator's death, the clerk shall open the will and deliver the same to any person entitled to offer it for probate.

Provided, the provisions of this section shall be applicable only to the clerk's office of a court wherein theretofore has been entered, by the judge or judges of such court, an order authorizing the use of its clerk's office for such purpose.

Source: § 64-57.1.

Note: No change.

§ 64.1-57. Incorporation by reference of certain powers of fiduciaries into will or trust instrument.—(1) The following powers, in addition to all other powers granted by law, may be incorporated in whole or in part in any will or trust instrument by reference to this section:

(a) To keep and retain any or all investments and property, real, personal or mixed, including stock in the fiduciary institution, if the same be a corporation, as they may be at the time they come into the custody of said fiduciary, regardless of the character of same or whether they are such as then would be authorized by law for investment by fiduciaries or whether a disproportionately large part of the trust estate remains invested in one or more types of property, for such time as the fiduciary shall deem best, and to dispose of such property by sale, exchange, or otherwise as and when such fiduciary shall deem advisable.

(b) To sell, assign, exchange, transfer and convey or otherwise dispose of, any or all of the investments and property, either real, personal or mixed, which may be included in, or may at any time become part of the trust estate upon such terms and conditions as the fiduciary in his absolute discretion, may deem advisable, at either public or private sale, either for cash or deferred payments or other consideration, as such fiduciary may determine; and for the purpose of selling, assigning, exchanging, transferring or conveying the same, to make, execute, acknowledge and deliver any and all instruments of conveyance, deeds of trust, or assignments in such form and with warranties and covenants as such fiduciary may deem expedient and proper; and in the event of any sale, conveyance, exchange, or other disposition of any of the trust estate, the purchaser shall not be obligated in any way to see to the application of the purchase money or other consideration passing in connection therewith.

(c) To invest and reinvest all of the funds of the estate as said fiduciary, in his sole discretion, may deem best, including investment in stocks, common and preferred, and common trust funds, without being restricted to those investments expressly approved by statute for investment by fiduciaries; and to change investments from realty to personalty, and vice versa.

(d) To lease any or all of the real estate, which may be included in or at any time become a part of the trust estate, upon such terms and conditions as said fiduciary, in his sole judgment and discretion, may deem advisable, and any lease or leases made by such fiduciary may extend beyond the term of the trust and for the purpose of leasing said real estate, to make, execute, acknowledge and deliver any and all instruments, in such form and with such covenants and warranties as such fiduciary may deem expedient and proper.

(e) To vote any stocks, bonds, or other securities held by such fiduciary at any meeting of stockholders, bondholders, or other security holders, and to delegate the power to so vote to attorneys-in-fact or proxies under power of attorney, restricted or unrestricted.

(f) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals and security as to such fiduciary shall seem advisable, including the power to borrow from the fiduciary, if the fiduciary be a bank, for the purpose of paying debts, taxes or other charges against the trust estate or any part thereof, and to mortgage or pledge such portion of the trust estate as may be required to secure such loan or loans; and as maker or endorser to renew existing loans.

(g) To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims, in favor of or against the trust estate as the fiduciary shall deem best, and his decision shall be conclusive.

(h) To make distributions in cash or in kind or partly in each at valuations to be determined by the fiduciary, whose decision as to values shall be conclusive.

(i) To determine whether any part of the trust estate or any addition or increment thereto be income or principal, or whether any cost, charge, expense, tax or assessment shall be charged against income or principal, or partially against income and partially against principal.

(j) To repair, alter, improve, renovate, reconstruct and demolish any of the buildings on the real estate held by such fiduciary and to construct such buildings and improvements thereon as such fiduciary may in his discretion, deem advisable.

(k) To employ and compensate, out of the principal or the income or both as to the fiduciary shall seem proper, agents, accountants, brokers, attorneys-in-fact, attorneys at law, tax specialists, realtors, and other assistants and advisors deemed by the fiduciary needful for the proper administration of the trust, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided he was selected and retained with reasonable care.

(l) To rely upon any affidavit, certificate, letter, notice, telegram, or other paper or upon any telephone conversation believed by such fiduciary to be genuine and upon any other evidence believed by such fiduciary to be sufficient, and to be protected and saved harmless in all payments or distributions required to be made hereunder if made in good faith and without actual notice or knowledge of the changed condition or status of any person receiving payments or other distributions upon a condition.

(m) To retain any interest held by such fiduciary in any business, whether as a stockholder or security holder of a corporation, a partner, a

sole proprietor, or otherwise, for any length of time, without limitations, solely at the risk of the trust estate and without liability on the part of the fiduciary for any losses resulting therefrom; to participate in the conduct of such business and take or delegate to others discretionary power to take any action with respect to its management and affairs which an individual could take as the owner of such business, including the voting of stock, and the determination of any or all questions of policy; to participate in any incorporation, reorganization, merger, consolidation, recapitalization or liquidation thereof; to invest additional capital in, subscribe to additional stock or securities of, and loan money or credit with or without security to, such business out of the trust property; to elect or employ as directors, officers, employees or agents of such business, and compensate, any persons, including the fiduciary or a director, officer, or agent of the fiduciary; to accept as correct financial or other statements rendered by the business from time to time as to his conditions and operations except when having actual notice to the contrary; to regard the business as an entity separate from the trust estate with no duty to account to any court as to his operations; to deal with and act for the business in any capacity, including any banking or trust capacity and the loaning of money out of the fiduciary's own funds, and to be compensated therefor; and to sell or liquidate such interest or any part thereof at any time. If any business shall be unincorporated, contractual and tort liabilities arising out of such business shall be satisfied, first, out of the business, and second, out of the trust estate; but it is intended that in no event shall there be a liability of the fiduciary, and if the fiduciary shall be held liable, such fiduciary shall be entitled to indemnification from the business and the trust estate in the order named. Such fiduciary shall be entitled to such additional compensation as is commensurate with the time, effort, and responsibility involved in his performance of services with respect to such business. Such compensation for services rendered to the business may be paid by such fiduciary from the business or from other assets or from both as the fiduciary, in his discretion, may determine to be advisable; the amount of such additional compensation, however, to be subject to the final approval of the court.

(n) To do all other acts and things not inconsistent with the provisions of the will or trust in which these powers are incorporated which such fiduciary may deem necessary or desirable for the proper management of the trusts herein created, in the same manner and to the same extent as an individual might or could do with respect to his own property.

(o) To hold property in his name or in the name of nominees.

(p) During the minority or the disability of any beneficiary, the fiduciary may, in his sole discretion, distribute income and principal to such beneficiary in any one of the following ways: (1) Directly to said beneficiary; (2) to a relative, friend, guardian, or committee, to be expended by such person for the education, maintenance, support or benefit of said beneficiary; or (3) by himself expending the same for the education, maintenance, support or benefit of said beneficiary.

(q) To continue and carry on any farming operation transferred to him and to operate such farms and any other farm which may be acquired and, in so doing, by way of illustration and not in limitation of his powers, to operate the farm with hired labor, tenants or sharecroppers; to hire a farm manager or a professional farm management service to supervise the farming operations; to lease or rent the farm for cash or for a share of the crops; to purchase or otherwise acquire farm machinery and equipment and livestock; to construct, repair and improve farm buildings of all sorts needed, in its judgment, for the operation of the farm; to make loans or advances or to obtain such from any source, including the fiduciary

at the prevailing rate or rates of interest for farm purposes such as for production, harvesting, or marketing, or for the construction, repair, or improvement of farm buildings or for the purchase of farm machinery or equipment or livestock; to employ approved soil conservation practices in order to conserve, improve and maintain the fertility and productivity of the soil; to protect, manage and improve the timber and forest on the farm and sell the timber and forest products when it is to the best interest of the estate or trust; to ditch and drain damp or wet fields and areas of the farm when and where needed; to engage in livestock production, if it is deemed advisable, and to construct such fences and buildings and plant such pastures and crops as may be necessary to carry on such a livestock program; to execute contracts, notes and chattel mortgages relating to agriculture with the Commodity Credit Corporation, the United States Secretary of Agriculture or any other officer or agency of the federal or State governments, to enter into acreage reduction agreements, to make soil conservation commitments, and to do all acts necessary to cooperate with any governmental agricultural program; and in general, to employ the methods of carrying on the farming operation that are in common use by other landowners in the community in which the farm is located, inasmuch as the duties the fiduciary is requested to assume with respect to farming operations may considerably enlarge and increase his usual responsibility and work as fiduciary, it is agreed that the fiduciary shall be entitled to such additional reasonable compensation as is commensurate with the time, effort and responsibility involved in his performance of such services.

(2) As used in the section, the term "fiduciary" shall mean and include one or more individuals or corporations having trust powers and the use of the male gender shall include the female; and any substitute, added or successor fiduciary shall have all of the powers hereby provided for the fiduciary named in the will or trust instrument.

Source: § 64-57.2.

Note: No change.

Article 2.

Revocation, etc.

§ 64.1-58. **Revocation of wills generally.**—No will or codicil, or any part thereof, shall be revoked, unless by a subsequent will or codicil, or by some writing declaring an intention to revoke the same, executed in the manner in which a will is required to be executed, or by the testator, or some person in his presence and by his direction, cutting, tearing, burning, obliterating, canceling or destroying the same, or the signature thereto, with the intent to revoke. The subsequent marriage of the testator or birth of a child to the testator shall have no effect upon a will previously executed by the testator.

Source: § 64-59.

Note: Section amended to recognize the repeal of § 64-58, common law revocation is also expressly excluded.

§ 64.1-59. **Partial revocation by divorce.**—If, after making a will, the testator is divorced a vinculo matrimonii, all provisions in the will in favor of the testator's divorced spouse are thereby revoked.

Source: New section.

Note: The language in this provision is taken from § 53 of the Model Probate Code. The second sentence of the Model Statute was deleted as having no applicability under Virginia Law.

§ 64.1-60. **Revival of wills after revocation.**—No will or codicil, or any part thereof, which shall be in any manner revoked, shall, after being revoked, be revived otherwise than by the re-execution thereof, or by a codicil executed in the manner hereinbefore required, and then only to the extent to which an intention to revive the same is shown.

Source: § 64-60.

Note: No change.

§ 64.1-61. **Effect of subsequent conveyance on will.**—No conveyance or other act, subsequent to the execution of a will, shall, unless it be an act by which the will is revoked as aforesaid, prevent its operation with respect to such interest in the estate comprised in the will as the testator may have power to dispose of by will at the time of his death.

Source: § 64-61.

Note: No change.

Article 3.

Construction and Effect.

§ 64.1-62. **Will to be construed as if made just before testator's death.**—A will shall be construed, with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

Source: § 64-62.

Note: No change.

§ 64.1-63. **When advancement deemed satisfaction of devise or bequest.**—A provision for or advancement to any person shall be deemed a satisfaction in whole or in part of a devise or bequest to such person, contained in a will executed prior to such provision or advancement if it shall appear from parol or other evidence to have been so intended.

Source: § 64-63.

Note: This section was changed to delete the presumption of a satisfaction of a devise or legacy to a child and to put the testator's children on equal footing with strangers.

§ 64.1-64. **When issue of devisee or legatee to take estate.**—If a devisee or legatee die before the testator, leaving issue who survive the testator, such issue shall take the estate devised or bequeathed, as the devisee or legatee would have done if he had survived the testator, unless a different disposition thereof be made or required by the will. This rule shall also apply to a devise or bequest to several jointly, one or more of whom die in the lifetime of the testator.

Source: § 64-64.

Note: No change.

§ 64.1-65. **How devises that fail, etc., to pass.**—Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised in any devise in such will, which shall fail or be void or otherwise incapable of taking effect, shall be included in the residuary devise, if any, contained in such will.

Source: § 64-65.

Note: No change.

§ 64.1-66. Devises in general terms; how construed.—A devise of the testator which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include such leasehold estate unless a contrary intention appear by the will.

Source: § 64-66.

Note: Section rewritten for clarity; no substantive changes.

§ 64.1-67. Devise or bequest as execution of power to appoint.—A devise or bequest shall extend to any real or personal estate, as the case may be, which the testator has power to appoint as he may think proper and to which it would apply if the estate were his own property, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

Source: § 64-67.

Note: No change.

§ 64.1-68. Interest on pecuniary legacies.—Unless a contrary intent is expressed in or to be implied from a will, interest on pecuniary legacies shall begin to run at the expiration of one year after the date of the death of the testator.

Source: § 64-68.

Note: No change.

§ 64.1-69. When direction to purchase annuity binding on legatee.—If a person direct in his will the purchase of an annuity sufficient to provide a minimum income of ten dollars per month, the person or persons to whom the income therefrom shall be paid, shall not have the right to take the sum directed to be used for such purpose in lieu of such annuity, except to the extent that the will expressly provides for such right or except to the extent that the will expressly provides that an assignable annuity be purchased.

Source: § 64-68.1.

Note: No substantive change; section rewritten for clarity.

§ 64.1-70. Provision for pretermitted children when no child living when will made.—If any person die leaving a child, or his wife with child, which shall be born alive, and leaving a will made when such person had no child living, wherein any child he might have is not provided for or mentioned, such child, or any descendant of his, shall succeed to such portion of the testator's estate as he would have been entitled to if the testator had died intestate; towards raising which portion the devisees and legatees shall, out of what is devised and bequeathed to them, contribute ratably, either in kind or in money, as a court of equity, in the particular case, may deem most proper. But if any such child, or descendant, die under the age of twenty-one years, unmarried, and without issue, his portion of the estate, or so much thereof as may remain unexpended in his support and education, shall revert to the person or persons to whom it was given by the will.

Source: § 64-69.

Note: No change.

§ 64.1-71. Provision when child living when will made.—If a will be made when a testator has a child living, and that child is provided for in the will, and a child be born afterwards, such afterborn child if not provided for by any settlement and neither provided for nor expressly excluded by the will, but only pretermitted, shall succeed to such portion

of the testator's estate as he would have been entitled to if the testator had died intestate; towards raising which portion the devisees and legatees shall, out of what is devised and bequeathed to them, contribute ratably, either in kind or in money, as a court of equity may deem proper. But if such afterborn child die under the age of twenty-one years, unmarried and without issue, his portion of the estate, or so much thereof as may remain unexpended shall revert to the person to whom it was given by the will.

Source: § 64-70.

Note: Section rewritten for clarity. No substantive changes.

§ 64.1-72. When re-executed wills deemed to be made.—Every will re-executed or republished, or revived by any codicil, shall, for the purposes of this chapter, be deemed to have been made at the time at which the same shall be so re-executed, republished or revived.

Source: § 64-71.

Note: No change.

§ 64.1-73. Devise or bequest to trustee of an established trust.—

(a) A devise or bequest (including the exercise of a power of appointment) may be made by a will duly executed pursuant to the provisions of this chapter to the trustee or trustees of an inter vivos trust or testamentary trust established by the testator or by the testator and some other person or persons or by some other person or persons:

(1) If in the case of an inter vivos trust, such trust is identified in the testator's will and its terms are set forth in a written instrument (other than a will) executed before or concurrently with the execution of the testator's will;

(2) If in the case of a testamentary trust, such trust is identified in the testator's will and its terms are set forth in the valid last will of a person who has predeceased the testator and whose will was executed before or concurrently with the execution of the testator's will; and,

(3) Further provided that in either event, at the testator's death at least one trustee of such trust is an individual resident of this State or is a corporation or association authorized to do a trust business in this State and provided further that a corporation or association not authorized to do a trust business in this State is not at the testator's death a trustee of such trust.

(b) Such inter vivos trust may be an unfunded insurance trust with the trustee or trustees being the beneficiary or beneficiaries under the insurance contract or contracts and with the testator or some other person having the right to change the beneficiary and/or having any or all other rights of ownership in such contract or contracts. For the purposes of this section:

(1) An unfunded insurance trust shall be deemed established upon execution of the instrument creating such trust (regardless of the existence, size or character of the corpus of the trust); and

(2) Such unfunded insurance trust may contain provisions whereby the amount of corpus to be allocated to any particular portion of the trust will be determined, measured or affected by the "adjusted gross estate" of the settlor or testator for federal estate tax purposes, or by the amount of the "marital deduction allowable" to the settlor's or testator's estate for federal estate tax purposes and such trust shall not be deemed testamentary by reason thereof.

(c) Such devise or bequest shall not be invalid because the trust is amendable or revocable or both by the settlor or any other person or persons, either prior or subsequent to the testator's death, or because the trust instrument or any amendment thereto was not executed in the manner required for wills or because the trust was amended after the execution of the will or after the death of the testator.

(d) Unless the testator's will provides otherwise, the property so devised or bequeathed:

(1) Shall not be deemed held under a testamentary trust of the testator, but shall become a part of the corpus of the trust to which it is given or, if the will so specifies, it shall become a part of any one or more particular portions of such corpus; and,

(2) Shall be administered and disposed of in accordance with the terms of the trust as they appear in writing at the testator's death (including any amendments thereto made before the death of the testator and regardless of whether made before or after the execution of the testator's will); or, if the testator expressly so specifies in his will, and only in such event, as such terms are amended after the death of such testator.

(e) In the event that the settlor (or other persons having the right to do so) revokes or otherwise terminates the trust pursuant to a power so to do reserved in the trust instrument, and such revocation or termination is effected at a date subsequent to the death of a testator who has devised or bequeathed property to such trust, the revocation or termination shall be ineffective as to property devised or bequeathed to such trust by a testator other than the settlor, unless the testator's will expressly provides to the contrary.

(f) The devise or bequest shall not be valid should the entire trust not be operative for any reason at the testator's death. If the devise or bequest is to augment only one or more portions of the trust such devise or bequest shall not be valid should the trust not be operative for any reason as to such portion or portions at the testator's death.

(g) This section shall apply to any devise or bequest made by a testator living on June twenty-ninth, nineteen hundred and sixty-two, or born thereafter, without regard to the date of the execution of the will or of the trust instrument or any amendment thereto; provided, however, that the provisions of this section shall not be construed as casting any doubt upon the validity as heretofore existing of any devise or bequest made by a testator who shall have died prior to June twenty-ninth, nineteen hundred and sixty-two, or any devise or bequest which does not come within the provisions of this section.

Source: § 64-71.1.

Note: No change.

§ 64.1-74. Distribution of assets by fiduciaries in satisfaction of pecuniary bequests or transfers in trust of pecuniary amount.—(a) Where a will or trust agreement authorizes or directs the fiduciary to satisfy wholly or partly in kind a pecuniary bequest or transfer in trust of a pecuniary amount, unless the instrument shall otherwise expressly provide, the assets selected by the fiduciary for that purpose shall be valued at their respective values on the date or dates of their distribution.

(b) Whenever a fiduciary under the provisions of a will or other governing instrument is required to satisfy a pecuniary bequest or transfer in trust in favor of the testator's or donor's spouse and is authorized to satisfy such bequest or transfer by selection and distribution of assets in kind, and the will or other governing instrument further provides that the assets to be so distributed shall or may be valued by some standard

other than their fair market value on the date of distribution, the fiduciary, unless the will or other governing instrument otherwise specifically directs, shall distribute assets, including cash, fairly representative of appreciation or depreciation in the value of all property available for distribution in satisfaction of such pecuniary bequest or transfer. This section shall not apply to prevent a fiduciary from carrying into effect the provisions of the will or other governing instrument that the fiduciary, in order to implement such a bequest or transfer, must distribute assets, including cash, having an aggregate fair market value at the date or dates of distribution amounting to no less than the amount of the pecuniary bequest or transfer as finally determined for federal estate tax purposes.

(c) Any fiduciary having discretionary powers under a will or other governing instrument with respect to the selection of assets to be distributed in satisfaction of a pecuniary bequest or transfer in trust in favor of the testator's or donor's spouse shall be authorized to enter into agreements with the Commissioner of Internal Revenue of the United States of America and other taxing authorities requiring the fiduciary to exercise the fiduciary's discretion so that cash and other properties distributed in satisfaction of such bequest or transfer in trust will be fairly representative of the appreciation or depreciation in value of all property then available for distribution in satisfaction of such bequest or transfer in trust, and any such agreement heretofore entered into after April one, nineteen hundred sixty-four, is hereby validated. Any such fiduciary shall be authorized to enter into any other agreement not in conflict with the express terms of the will or other governing instrument that may be necessary or advisable in order to secure for federal estate tax purposes the appropriate marital deduction available under the internal revenue laws of the United States of America, and to do and perform all acts incident to such purpose.

Source: § 64-71.2.

Note: No change.

Article 4.

Probate.

§ 64.1-75. Jurisdiction of probate of wills.—The circuit and corporation courts of the Commonwealth, and the clerks of such courts, and the duly qualified deputies of such clerks, and the clerks of all other courts having jurisdiction of the probate of wills, shall have such jurisdiction according to the following rules: In the county or corporation wherein the decedent has a mansion house or known place of residence; if he has no such house or known place of residence, then in a county or corporation wherein any real estate lies that is devised or owned by the decedent; and if there be no such real estate, then in the county or corporation wherein he dies or a county or corporation wherein he has estate; provided, however, that in the city of Richmond the Chancery Court and the Hustings Court, Part Two, of such city, and the clerks of such courts and their duly qualified deputies shall have such jurisdiction which shall be exercised within their respective territorial jurisdictions as defined by law and in the manner heretofore provided by law.

Source: § 64-72.

Note: No change.

§ 64.1-76. Residence of patient in nursing home, convalescent home, etc.—Where any person has because of advanced age or impaired health either voluntarily or involuntarily become a patient in a nursing

home, a convalescent home, or a similar institution, the place of legal residence of such person shall be presumed to be the same as it was before he became such a patient; provided, however, that such presumption may be rebutted by competent evidence.

Source: § 64-72.1.

Note: No change.

§ 64.1-77. Clerks may probate wills, appoint appraisers or administrators, qualify executors, etc.—The clerk of any circuit or corporation court, or the clerks of the Chancery Court or the Hustings Court, Part Two, of the city of Richmond, or the clerk of any other court having jurisdiction of the probate of wills, other than the clerks of the circuit court and the several corporation courts of the city of Richmond with the exception of the Chancery Court and the Hustings Court, Part Two, within their respective territorial jurisdictions as defined by law, or any duly qualified deputy of any such clerks, may appoint appraisers of estates of decedents, admit wills to probate, appoint and qualify executors, administrators and curators of decedents, and require and take from them the necessary bonds in the same manner and with like effect as the court could do if in session. Such powers and duties may be exercised and discharged as well during the sessions of the court as at other times.

Such clerk shall keep an order book, in which shall be entered all orders made by him, or his deputy, respecting the subjects aforesaid.

All wills heretofore admitted to probate by any duly qualified deputy clerk of any court of competent jurisdiction shall be deemed to have been properly admitted to probate to the same extent as if the clerk had acted in the proceeding.

Source: § 64-73.

Note: No change.

§ 64.1-78. Appeal from order of clerk.—Any person interested may, within six months after the entering of such an order, appeal therefrom as a matter of right, without giving any bond, to the court whose clerk, or deputy, has made the order. Upon application being made for such appeal, the clerk or deputy shall enter forthwith in his order book an order allowing such appeal, and docket the same as a preferred cause for trial at the next term of the court. The court at any term shall hear and determine the matter as though it had been presented to the court in the first instance, and shall cause a copy of the order on the order book of the court embracing its final action to be copied by the clerk, or deputy, into his order book. At any time after such appeal is allowed the court, or the judge thereof in vacation, may make any such order for the protection of the parties interested or for the protection or preservation of any property involved as might have been made had the matter been originally presented to the court, or as may seem needful.

Source: § 64-74.

Note: No change.

§ 64.1-79. Person offering will for probate may have persons interested cited to appear.—A person offering, or intending to offer, to a court having jurisdiction of the probate of wills or to the clerk of a circuit court having such jurisdiction, a will for probate, may obtain from the clerk of such court process directed to the proper officer of any county or corporation, requiring him to summon any person interested in

such probate to appear at the next term of such court, on a day named in the summons, to show cause why the will should not be admitted to probate.

Source: § 64-75.

Note: No change.

§ 64.1-80. **Circuit and corporation courts may do same.**—A circuit or corporation court or the Chancery Court or the Hustings Court, Part Two, of the city of Richmond to which a will is offered for probate, or into which the question of probate is removed by appeal or otherwise, may cause all persons interested in the probate to be summoned to appear on a certain day.

Source: § 64-76.

Note: No change.

§ 64.1-81. **Process against persons interested; guardian ad litem.**—Any person interested in such probate may be summoned, or proceeded against, by order of publication; and to any person so interested a guardian ad litem may be assigned, as in other cases.

Source: § 64-77.

Note: The reference to infants or persons of unsound mind has been deleted.

§ 64.1-82. **When court to hear motion.**—When all the persons interested in such probate shall be properly convened by such summons or order of publication, or assignment of guardian, or shall otherwise appear as parties, the court shall proceed to hear the motion for such probate.

Source: § 64-78.

Note: No change.

§ 64.1-83. **Court may require all testamentary papers to be produced; trial by jury; judgment.**—In every such proceeding the court may require all testamentary papers of the same decedent to be produced. If any person interested ask it, it shall order a trial by a jury, to ascertain whether any paper, or if there be more than one, which of the papers produced, be the will of the decedent and if no such trial be asked shall proceed without it to decide the question of probate. The court shall make a final decree or order as to the probate.

Source: § 64-79.

Note: The word “decree” has been substituted for “sentence.”

§ 64.1-84. **Effect of judgement.**—In such a proceeding any such decree or final order shall be a bar to a bill in equity to impeach or establish such will, unless on such a ground as would give to a court of equity jurisdiction over other judgments at law.

Source: § 64-80.

Note: The word “decree” is substituted for “sentence.”

§ 64.1-85. **Motion for probate may be ex parte.**—Any court having jurisdiction of the probate of wills under § 64.1-75 may, however, without summoning any party, proceed to probate and admit the will to record or reject the same.

Source: § 64-81.

Note: Internal section reference has been conformed.

§ 64.1-86. How production of will compelled.—Any court having jurisdiction of the probate of wills, on being informed that a person has in his custody the will of a testator, may summon him and by proper process compel him to produce the same.

Source: § 64-82.

Note: No change.

§ 64.1-87. When deposition of witness may be taken and read on probate of will.—When any will, or authenticated copy thereof, is offered for probate, and a witness attesting the same, or in event the will be wholly in the handwriting of the testator, a witness to prove such handwriting, resides out of this State, or though in this State is confined in another county or corporation under legal process, or is unable from sickness, age or any other cause to attend before the court or clerk where the same is offered, the same may be proved by the deposition of the witness or witnesses, which shall be taken and certified as depositions are taken in other cases, except that no notice need be given of the time and place of taking the same, unless it be in a case in which the probate is opposed by some person who has made himself a party; and the proof so given shall have the same effect as if it had been given before such court or clerk. For the purpose of making such proof the party offering such will or copy shall be permitted to withdraw temporarily the original thereof upon leaving an attested copy with such court or clerk. Such deposition may be taken prior to the time that the will is offered for probate, and the deposition filed at the same time the will is offered, provided, that if probate is opposed by some person who has made himself a party, such person shall have the right to examine such witness.

Source: § 64-83.

Note: No change.

§ 64.1-88. Bill to impeach or establish a will.—After a decree or order under § 64.1-85 or under § 64.1-77, a person interested, who was not a party to the proceeding, may proceed by bill in equity to impeach or establish the will, on which bill a trial by jury shall be ordered to ascertain whether any, and if any how much, of what was so offered for probate be the will of the decedent. The court may also, if it deem proper, require all testamentary papers of the same decedent to be produced and direct the jury to ascertain whether any, or if there be more than one which, of the papers produced, or how much of what was so produced, be the will of the decedent.

Source: § 64-84.

Note: The word “decree” has been substituted for “sentence.”

§ 64.1-89. When bill must be filed and where.—If the decree or order be made by the court in the exercise either of its original jurisdiction or an appeal from the clerk, such bill shall be filed within one year from the date of such order made by the court. If no appeal be taken from a decree or order made by the clerk under § 64.1-77, the bill shall be filed within one year from the date of such order or decree by the clerk. If no such bill be filed within that time, the decree or order shall be forever binding. No bill shall be filed under § 64.1-88 except in the court in which, or in the clerk’s office of which, the will was admitted to probate.

Source: § 64-85.

Note: The word “decree” has been substituted for “sentence.”

§ 64.1-90. Saving in favor of infants, persons of unsound mind, and non-residents.—Sections 64.1-84, 64.1-88 and 64.1-89 are subject to this proviso: that any person interested who has not otherwise been before the court and who, at the time of the decree or order, is under the age of twenty-one years or of unsound mind may file a bill in equity to impeach or establish the will within one year after he becomes of age or is restored to sanity, as the case may be, and any person interested who at that time resides out of this State or shall have been proceeded against by order of publication may, unless he actually appeared as a party or was personally summoned, file such bill within two years after such decree or order.

Source: § 64-86.

Note: Section amended so that a person who had previously been before the court could not come in again under this section. The word “decree” has been substituted for “sentence.” Internal Code section references have been conformed.

§ 64.1-91. What may be admitted as evidence on trial by jury.—The record of what is proved or deposed in court by witnesses on the motion to admit a will to record and any depositions lawfully taken out of court, on such motion, of witnesses who cannot be produced at a trial afterwards before a jury may, on such trial, be admitted as evidence, to have such weight as the jury shall think it deserves.

Source: § 64-87.

Note: No change.

§ 64.1-92. Probate of copy of will proved without the State; to what extent admitted to probate.—When a will relative to an estate within this State has been proved without the same, an authenticated copy thereof and the certificate of probate thereof may be offered for probate in this State. When such copy is so offered, the court or the clerk thereof to which it is offered shall presume, in the absence of evidence to the contrary, that the will was duly executed and admitted to probate as a will of personalty in the State or country of the testator’s domicile and shall admit such copy to probate as a will of personalty in this State. And if it appear from such copy that the will was proved in the foreign court of probate to have been so executed as to be a valid will of lands in this State by the law thereof, such copy may be admitted to probate as a will of real estate. The probate of any such copy of a will before any such clerk shall have the same legal operation and effect as if such copy had been admitted to probate by the court.

Source: § 64-88.

Note: No change.

§ 64.1-93. Appointment of curator; when made; his duties.—Such court or clerk as is mentioned in § 64.1-75, or any duly qualified deputy of such clerk, may appoint a curator of the estate of a decedent during a contest about his will, or during the infancy or in the absence of an executor, or until administration of the estate be granted, taking from him bond in a reasonable penalty. The curator shall take care that the estate is not wasted before the qualification of an executor or administrator, or before such estate shall lawfully come into possession of such executor or administrator. He may demand, sue for, recover and receive all debts due to the decedent, and all his other personal estate, and likewise may lease or receive the rents and profits of any real estate whereof the decedent or testator may have died seized or possessed. He shall pay debts, so far as such payment may not affect the priority in the order of

payment prescribed by law, and may be sued in like manner as an executor or administrator; and upon the qualification of an executor or administrator shall account with him for and pay and deliver to him such estate as he has in his hands or may be liable for.

Source: § 64-89.

Note: Internal section reference has been conformed.

Article 5.

Recordation and Effect Thereof.

§ 64.1-94. Wills to be recorded; recording copies; effect; indexing.—Every will or authenticated copy admitted to probate by any court or clerk of any circuit court shall be recorded by the clerk and remain in the clerk's office, except during such time as the same may be carried to another court under a subpoena duces tecum. A duly certified copy of such will or of any authenticated copy so admitted to record may be recorded in any county or city wherein there is any estate, real or personal, devised or bequeathed by such will.

The personal representative of the testator shall cause a duly certified copy of any will or of any authenticated copy so admitted to record to be recorded in any county or city wherein there is any real estate of which the testator died seized or which is devised by his will. On and after July 1, 1964, such will shall be indexed in the General Indices of Deeds in such clerk's office in the name of the testator as grantor, except in such clerk's office wherein General Indices to Wills are kept.

Every will, or such a duly certified copy as is mentioned in this section, when duly recorded shall have the effect of notice to all persons of any devise or disposal by the will of real estate situated in a county or city in which such will or copy is so recorded.

Every clerk on recording any will, or such a copy as is mentioned in this section, shall index the same as required by law.

Source: § 64-90.

Note: No change.

§ 64.1-95. Bona fide purchaser of real estate without notice of devise protected.—The title of a bona fide purchaser without notice for valuable consideration from the heir-at-law of a person who has died heretofore, or who may die hereafter, having title to any real estate of inheritance in this Commonwealth, shall not be affected by a devise of such real estate made by the decedent, unless within one year after the testator's death the will devising the same or, if such will has been probated without this State, an authenticated copy thereof and the certificate of probate shall be filed for probate before the court or clerk having jurisdiction for that purpose and shall afterwards be admitted to probate and recorded in the proper court or clerk's office as a will of real estate.

Source: § 64-91.

Note: The provision excepting this section as to infants or insane persons has been deleted for the protection of a bona fide purchaser.

§ 64.1-96. Same; later will.—The title of a bona fide purchaser without notice for valuable consideration from the devisee, or from the personal representative with power to sell, encumber, lease or exchange, under the will of a person who has died heretofore, or may die hereafter, having title to any real estate of inheritance in this Commonwealth, shall not be affected by any other devise of such real estate made by the testator in another will, unless within one year after the testator's death such

other will or, if such other will has been probated without this State, an authenticated copy thereof and the certificate of probate shall be filed for probate before the court or clerk having jurisdiction for that purpose and shall afterwards be admitted to probate and recorded in the proper court or clerk's office as a will of real estate.

Source: § 64-92.

Note: The provision excepting this section as to infants or insane persons has been deleted for the protection of a bona fide purchaser.

CHAPTER 4. UNIFORM SIMULTANEOUS DEATH ACT.

§ 64.1-97. No sufficient evidence of survivorship; disposition of property of decedents.—When the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this chapter.

Source: § 64-93.

Note: No change.

§ 64.1-98. Beneficiaries of another person's disposition of property.—When two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

Source: § 64-94.

Note: No change.

§ 64.1-99. Joint tenants or tenants by the entirety.—When there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

Source: § 64-95.

Note: No change.

§ 64.1-100. Insurance policies.—When the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

Source: § 64-96.

Note: No change.

§ 64.1-101. Chapter not retroactive.—This chapter shall not apply to the distribution of the property of a person who died prior to June the twenty-seventh, nineteen hundred and forty-two.

Source: § 64-97.

Note: No change.

§ 64.1-102. Chapter does not apply if decedent provides otherwise.—This chapter shall not apply in the case of wills, living trusts, deeds or contracts of insurance wherein provision has been made for distribution of property different from the distribution that would be made under the provisions of this chapter.

Source: § 64-98.

Note: No change.

§ 64.1-103. Uniformity of interpretation.—This chapter shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact substantially identical laws.

Source: § 64-99.

Note: No change.

§ 64.1-104. Short title.—This chapter may be cited as the Uniform Simultaneous Death Act.

Source: § 64-100.

Note: No change.

CHAPTER 5. PERSONS PRESUMED DEAD.

§ 64.1-105. Presumption of death from absence; in cause wherein death comes in question.—If any person, who shall have resided in this State, either (1) go from and do not return to the State for seven years successively and be not heard from or (2) disappear for seven years successively and be not heard from, or (3) if any person not residing in this State, but owning real property herein shall disappear for seven years successively from the place of his residence outside of this State and be not heard from, any such person shall be presumed to be dead in any cause wherein his death shall come in question, unless proof be made that he was alive within that time. But before any final order or decree is entered in any such cause, in favor of the alleged heirs, devisees or legatees of the supposed decedent, or persons claiming by, through or under them, or any of them, proceedings shall be had in conformity with §§ 64.1-107 to 64.1-112, provided that such person so presumed to be dead, his heirs at law, devisees, next of kin and legatees, may be made parties defendant to proceedings in respect to property, real or personal, in which he may have an undivided interest, by order of publication or other process as provided by law, and such proceedings, whether in the nature of partition, eminent domain or otherwise, shall not be stayed in respect to the division, sale or other disposition of the entire property and the sections above mentioned shall be applicable only to the portion of the property set apart or to the share of the proceeds to which such person would be entitled.

Source: § 64-101.

Note: No substantive changes; section rewritten for clarity. Internal Code section references have been conformed.

§ 64.1-106. Distribution of fund when presumption of death not applicable.—If in any chancery cause wherein any estate or fund is to be distributed the interest of any person therein depends upon his having been alive at a particular time and it is not known and cannot be shown by the exercise of reasonable diligence whether such person was alive at that time and the case is one in which the legal presumption of death

from absence does not apply, the court may, if it sees no cause to the contrary, enter its decree distributing the estate or fund among those who would be entitled thereto if it were shown that such person above referred to were dead at such particular time; provided, however, that a proper refunding bond be given with condition to account for the estate or fund to any person who may establish title thereto adverse to that of the distributees, or to the heirs, personal representatives or assigns of such person.

No motion shall be made hereunder except after reasonable notice to all parties upon whom service may be had; nothing in this section shall be construed to affect in any way any requirement of law as to service or publication of process.

Source: § 64-102.

Note: No change.

§ 64.1-107. Probate or administration not to be granted by a clerk.—Neither probate of a will of a person presumed to be dead on account of absence from his last domicile in this State for seven years or more, nor administration upon the estate of such person shall in any case be granted by a clerk.

Source: § 64-103.

Note: No change.

§ 64.1-108. Probate or administration before court; notice of application.—Whenever a will of any person supposed to be dead on account of absence for seven years or more from the place of his last domicile in this State shall be offered for probate, or whenever letters of administration on the estate of any person so supposed to be dead shall be applied for, the court having jurisdiction if such person were dead, if satisfied that the will so offered for probate should be probated or that the applicant would be entitled to letters of administration were the supposed decedent in fact dead, shall cause to be advertised in a newspaper published in the county or city once a week for four successive weeks the fact of the offer or application, together with notice that on a certain day, which shall be at least two weeks after the advertisement, the court or judge will hear evidence concerning the alleged absence of the supposed decedent and the circumstances and duration thereof.

Source: § 64-104.

Note: No change.

§ 64.1-109. Application for order when probate or administration unnecessary.—Whenever any person shall claim, either as widow or heir at law or otherwise, any property of a person supposed to be dead on account of absence for seven years or more from the place of his last domicile and there shall be no will or no necessity for grant of letters of administration, such person may apply to the court which would have jurisdiction for probate or for granting letters of administration, or the judge thereof in vacation, to have the fact of such descent established and thereupon the court shall, if satisfied that the person so claiming would be so entitled were the supposed decedent in fact dead, shall cause notice of such application to be published as provided above in respect to offer of a will for probate or application for letters of administration.

Source: § 64-105.

Note: No change.

§ 64.1-110. Hearing application; evidence receivable; further publication.—At the hearing, which shall be either in term or vacation, the court or judge shall hear such legal evidence as may then be offered for the purpose of ascertaining whether or not the presumption of death is made out and if satisfied that the legal presumption of death is made out the court or judge shall so order. If the evidence show the length of absence of supposed decedent to be more than seven years, but less than twenty years, the court or judge shall forthwith cause notice of the order to be inserted once a week for two successive weeks in a newspaper published in the county or city and also, when practicable, in a newspaper published at or near the place where the supposed decedent had his residence when last heard from. Such notice shall require the supposed decedent, if alive, or any person for him to produce to the court, or the judge thereof in vacation, within twelve weeks from the date of its last insertion satisfactory evidence of his continuance in life. If there be not in the county or city a newspaper in which the publication required by this and the two preceding sections may be had, the same may be published in such newspaper having general circulation therein as the court or judge shall order.

Source: § 64-106.

Note: No change.

§ 64.1-111. Grant of probate, administration or order; effect.—If the evidence at the hearing required by the preceding section show the length of absence to be twenty years or more or if within the period of twelve weeks after publication of the order on the hearing aforesaid evidence satisfactory to the court or judge of the continuance in life of the supposed decedent shall not be forthcoming, the court or judge shall proceed to admit such will to probate or issue letters of administration to the party entitled thereto or order that the claim of the widow or heirs at law or other person be established, as the case may be, and such probate and letters and such descent, until the order in respect thereto be revoked, and all acts done in pursuance thereof and in reliance thereon, shall be as valid as if the supposed decedent were really dead.

Source: § 64-107.

Note: No change.

§ 64.1-112. Distribution of estate; refunding bond; investment.—Before any distribution of the proceeds of the estate of such supposed decedent shall be made and before sale of any real or personal property passing in kind by persons claiming the same as heirs at law or devisees, the persons entitled to receive such proceeds or such property in kind shall give a refunding bond with surety to be approved by the court or judge, in such form as the court or judge shall direct, and with condition that if the supposed decedent shall in fact be alive at that time, they will respectively refund the amounts received by each on demand, with interest thereon; but if the persons entitled to receive the same are unable to give the security aforesaid, then the money shall be invested under an order of the court or judge in such manner as the court or judge may approve, which investment may be changed from time to time as the court or judge may deem proper. The interest arising from such investment shall be paid annually to the persons appearing to be entitled thereto and such investment shall continue until security is given, as aforesaid, or the court or judge, on application, shall order it to be paid to the persons appearing to be entitled to it. But if the evidence shows the

length of absence of the supposed decedent to be more than fifteen years, the court or judge shall not require surety on such refunding bond.

Source: § 64-108.

Note: No change.

§ 64.1-113. Revocation of probate, etc.; effect on previous acts; title of purchasers, widow, etc.—The court, or judge thereof in vacation, after reasonable notice to the parties interested, may revoke such letters or such order of probate or such order establishing descent of property in kind at any time on due and satisfactory evidence that the supposed decedent is in fact alive. After such revocation all powers of the personal representative shall cease, but all receipts and disbursements of assets and other acts previously done by him and the title of bona fide purchasers to property under sales made by him or by the widow, heir at law or devisee, if such widow, heir at law or devisee shall have complied with § 64.1-112, shall remain as valid as if no revocation had been made. The personal representative shall settle his account and all assets remaining in his hands or in the hands of such widow, heir at law or devisee and the proceeds thereof shall be transferred to the owner thereof presumed to be dead or to his duly authorized agent or attorney. Nothing in this section shall validate the title of any person to any money or property received as widow, heir at law, devisee, next of kin or legatee of such supposed decedent, but the same may be recovered from them in like manner as if such administration had not been granted.

Source: § 64-109.

Note: Internal section reference has been conformed.

§ 64.1-114. Substitution of supposed decedent in pending actions; reopening of judgments; effect of judgments.—After revocation of the letters the person erroneously supposed to be dead may, on suggestion filed of record of the proper fact, be substituted as plaintiff in all actions brought by the administrator, whether prosecuted to judgment or otherwise. He may, in all actions previously brought against his administrator, be substituted as defendant, on proper suggestion filed by himself, or of the plaintiff therein, but shall not be compelled to go to trial in less than three months from the time of such suggestion filed. Judgments recovered against the administrator before revocation as aforesaid of the letters may be opened, on application by the supposed decedent made within three months from the revocation and supported by affidavit, denying specifically, on the knowledge of the affiant, the cause of the action, in whole or in part, or specifically alleging the existence of facts which would be a valid defense; but, if within such period of three months, such application shall not be made or, being made, the facts exhibited shall be adjudged an insufficient defense, the judgment shall be conclusive to all intents, saving the defendant's right to have it reviewed, as in other cases, by certiorari, appeal or writ of error. After the substitution of the supposed decedent as defendant in any judgment, as aforesaid, it shall become a lien upon his real estate in the county or city and shall so continue as other judgments, unless and until it shall be set aside by the court below or reversed in the Supreme Court of Appeals.

Source: § 64-110.

Note: No change.

§ 64.1-115. Costs, by whom payable.—The costs attending the issue of such letters or their revocation shall be paid out of the estate of the supposed decedent; and costs arising upon an application for letters which shall not be granted shall be paid by the applicant.

Source: § 64-111.

Note: No change.

CHAPTER 6.
PERSONAL REPRESENTATIVES
AND ADMINISTRATION OF ESTATES.

Article 1.

Appointment and Qualification.

§ 64.1-116. **When and to whom administration, with the will annexed, may be granted.**—If there be no executor appointed by the will or if all the executors therein named refuse the executorship or fail to give bond when required, which shall amount to such refusal, or having qualified die, resign or are removed from office, the court or clerk may grant administration with the will annexed to the person who would have been entitled to administration if there had been no will, upon his taking such oath and giving such bond; provided that administration shall not be granted to any person unless the court or clerk is satisfied that he is suitable and competent to perform the duties of his office.

Source: § 64-112.

Note: No change.

§ 64.1-117. **Oath of executor or such administrator.**—The oath of an executor or of an administrator with the will annexed shall be that the writing admitted to record contains the true last will of the deceased, so far as he knows or believes, and that he will faithfully perform the duties of his office to the best of his judgment. Such oath may be taken on behalf of a corporation by its president, vice-president, secretary, treasurer or trust officer.

Source: § 64-113.

Note: No change.

§ 64.1-118. **What clerk or court to appoint administrator of an estate; who to be preferred.**—In the case of a person dying intestate the jurisdiction to hear and determine the right of administration of his estate shall be in the same court or before the same clerk who would have jurisdiction as to the probate of his will, if there were a will. Administration shall be granted to the distributees who apply therefor, preferring first the husband or wife and then such of the others entitled to distribution as the court or clerk shall see fit. But any of the distributees may at any time waive his right to qualify in favor of any other person to be designated by him. If no distributee apply for administration within thirty days from the death of the intestate, the court or clerk may grant administration to one or more of the creditors or to any other person, provided that administration shall not be granted to any person unless the court or clerk is satisfied that he is suitable and competent to perform the duties of his office.

Source: § 64-114.

Note: No change.

§ 64.1-119. **Oath and bond of administrator; when grant to cease.**—Before any grant of administration, as of the estate of an intestate, the person to whom it is granted shall, in the court or before the clerk granting it, give bond and take an oath that the deceased has left no will, so far as he knows, and that he will faithfully perform the duties of his office to the best of his judgment. Such oath may be taken on behalf of a corporation by its president, a vice-president, secretary, treasurer or trust officer. If a will of the decedent be afterwards admitted to record, or if, after administration is granted to a creditor or other person than a distributee, any distributee who shall not have before refused shall

apply for administration, there may be a grant of probate or administration, after reasonable notice to such creditor or other person, in like manner as if the former grant had not been made; and the former grant shall thereupon cease.

Source: § 64-115.

Note: No change.

§ 64.1-120. Penalty of bond of executor or administrator.—Every bond of an executor or administrator shall be in a penalty equal, at the least, to the full value of the personal estate of the deceased to be administered; and when there is a will which authorizes the executor or administrator to sell real estate, or receive the rents and profits thereof, the bond shall be in a penalty equal, at the least, to the full value both of the personal estate and of such real estate, or rents and profits, as the case may be.

Source: § 64-116.

Note: No change.

§ 64.1-121. When security not required.—Where the personal representative of an estate is the sole distributee or sole beneficiary thereof, the court or clerk shall not require security of him, nor shall security be required of an executor when the will waives security of an executor nominated therein unless upon the application of any person who has a pecuniary interest. Upon its own motion the court may require such fiduciary to provide security in an amount deemed sufficient. If at any time any person with an interest, or a legatee, devisee or distributee of an estate shall file with the court a motion in writing suggesting that surety upon the bond should be required of a fiduciary for the protection of the estate, a copy of such motion shall be served upon the fiduciary and the court shall hear the matter and may require the fiduciary to furnish surety upon his bond in the amount it deems necessary and, in addition, award to the movant reasonable attorney's fees and costs which shall be paid out of the estate.

Source: § 64-117.

Note: This section has been substantially changed. § 64-117 contains only the provision of the first sentence relating to executors named in the will.

§ 64.1-122. Letters of administration in due form unnecessary; how made out when required.—A copy of the order whereby certificate is granted to any personal representative for obtaining probate or letters of administration shall be as effectual as the probate or letters made out in due form. Nevertheless the clerk of the court by which such order is made shall, when required by any personal representative, make out such probate or letters in due form. The same, when so made out, shall be signed by the clerk, sealed with the seal of the court and certified by the judge to be attested in due form.

Source: § 64-118.

Note: No change.

Article 2.

Payments, Settlements or Administration without Appointment of Representative

§ 64.1-123. Payment of certain small sums due persons upon whose estates there has been no qualification.—When there is due a sum of not exceeding one thousand dollars from the State, whether it be a State

income tax refund or a sum due on some other account, or when there is due a sum of not exceeding one thousand dollars from the United States as a pension or money allowed for burial expenses of soldiers, or from any employer to a deceased employee, upon whose estate there has been no qualification, the State, the United States or such employer, after one hundred and twenty days from the death of such person to whom such money is due, may pay such sum to his or her surviving consort, if any, and if none such, then to the distributees of the decedent under the laws of this State whose receipt therefor shall be a full discharge and acquittance to all persons whomsoever on account of such sum.

Source: § 64-119.

Note: No change.

§ 64.1-124. Payment to consort or to court of small sum of deceased inmate of State mental institution.—When a person for whom no committee or trustee has been appointed is committed to a mental institution supported by the State and dies therein and there is in the hands of the superintendent of such institution a sum not exceeding one thousand dollars, the property of such deceased person, and there has been no qualification upon the estate of such deceased person within one hundred twenty days following the death of such person, then such superintendent may pay such sum to the surviving consort, if any, and if none, then to the next of kin of the decedent whose receipt therefor shall be a full discharge and acquittance to the superintendent on account of such sums, and if none such then to the court having jurisdiction over the appointment of the personal representative of the decedent who may distribute the same in accordance with § 8-750.

Source: § 64-119.1.

Note: No change.

§ 64.1-125. Distribution of certain welfare funds due decedents upon whose estates there has been no qualification.—Where any person, adult or infant, entitled to payments under chapters 5 (§§ 63-100 et seq.), 6 (§§ 63-115 et. seq.), 7 (§§ 63-141 et. seq.), 8 (§§ 63-162 et. seq.) and 9 (§§ 63-205 et seq.) of Title 63, dies and there has been no qualification upon the estate of such deceased person within one hundred twenty days following his death, the agency may disburse the funds directly to such person or persons as it might in its own discretion determine to be entitled thereto. Such agency shall be authorized to stop payment on any check issued but not cashed at the time of the decedent's death and disburse said funds as hereinbefore provided. Receipts of such person or persons receiving said funds shall be a full and complete discharge and acquittance of said agency.

Source: § 64-119.2.

Note: No change.

§ 64.1-126. Family may use such dead victuals and livestock as are necessary.—The dead victuals, or as much thereof as may be necessary, which, at the death of any person, shall have been laid in for consumption in his family, shall remain for the use of such family, if the same be desired by any member of it, without account thereof being made. Any livestock necessary for the food of the family may be killed for that use before the sale or distribution of the estate and the same shall not be taken into account by the administrator or executor of the estate.

Source: § 64-120.

Note: No change.

§ 64.1-127. What articles vest absolutely in widow, minor children, and unmarried daughters.—Upon the death of a householder leaving a widow, minor children or daughters who have never married, there shall be vested in them, or such of them as shall then constitute members of the household, absolutely and exempt from sale for funeral expenses, debts of the decedent or charges of administration of his estate, such of his property as would, if he were alive and a householder, be exempted under § 34-26 from levy or distress for his debts, and also, if he be at the time of his death actually engaged in the business of agriculture, such of his property as would, were he alive and a householder, be exempt under § 34-27 from levy or distress for his debts.

Source: § 64-121.

Note: No change.

§ 64.1-128. Transfer of evidences of indebtedness, securities and corporate stock held in decedents' estates.—When any executors or administrators appointed under this title shall have qualified thereunder and given bond as required in § 64.1-120, shall have completed the distribution of the estate with the exception of transferring any evidences of indebtedness, securities or stock in any corporation constituting a portion of such estate, such executors or administrators or the survivors thereof may file with the clerk of the court, in which such executors or administrators qualified, a petition under oath, describing any such evidences of indebtedness, securities and stock, reciting that all debts of the decedent have been paid and that a final accounting has been filed and approved, and, upon receipt of such petition, the clerk of the said court shall issue a certificate certifying that the powers of such executors or administrators continue in full force and effect.

Source: § 64-121.1.

Note: Internal section reference has been conformed.

§ 64.1-129. Transfer of securities of nonresident decedents.—The stocks, bonds or certificates of debt of this State, and of any corporation created by it and of any national bank or other corporations created by or pursuant to authority of an act of Congress of the United States having its principal office in this State, standing in the name of a decedent domiciled at the time of his death out of this State and who is not known by the officer or agent charged with the duty of transferring such stocks, bonds or certificates to have a personal representative qualified as such within this State, may be transferred by the executor or administrator of such decedent qualified according to the laws of the domicile.

Source: § 64-122.

Note: No change.

§ 64.1-130. Money and personal property belonging to nonresident decedents.—When any person, at the time of his death domiciled outside of this State, shall own stocks, bonds or other securities or money located in this State or shall be entitled to any debts or choses in action in this State, such stocks, bonds, other securities, money, debts and other choses in action shall, for ninety days from the death of such decedent, be retained in the possession of the person, firm or corporation holding or owing the same, after which period of time such portion thereof as to which the person, firm or corporation shall not have received legal notice of any lien or encumbrance, shall be paid over or delivered on demand to an executor or an administrator or other personal representative, duly qualified according to the laws of the decedent's domicile; provided, however, that the value of

such stocks, bonds, other securities, money, debts and other choses in action in this State, to the knowledge of the person holding or owing the same, is less than one thousand dollars. When the value of such stocks, bonds, other securities, money, debts and other choses in action is one thousand dollars or more, such payment or delivery of such stocks, bonds, other securities, money, debts and other choses in action may be made upon the expiration of such ninety-day period after the transferor shall have given public notice of his intention to make such transfer by publication thereof once a week for four successive weeks in a newspaper of general circulation in the city, town or county wherein the transferor resides or has its principal place of business, and after the lapse of thirty days from the completion of such publication, and provided, in either case, that at the time of such payment or delivery, the transferor has no actual notice of the appointment, within this State, of a personal representative for such decedent.

This section shall be construed as providing, as to the payment of money and the delivery of personal property belonging to nonresident decedents or their estates, optional methods of procedure in addition to those otherwise permitted or provided by law, and shall not as to such matters add any limitations or restrictions to existing law.

Source: § 64-123.

Note: No change.

§ 64.1-131. When estate committed to sheriff or sergeant; when court may allow another to qualify.—If at any time two months elapse without there being an executor or administrator of the estate of a decedent, except during a contest about the decedent's will or during the infancy or absence of the executor, the court, or the clerk thereof, in which or by whose clerk the will was admitted to record or which has jurisdiction to grant administration on the decedent's estate shall, on the motion of any person, order the sheriff of the county or the sergeant of the city to take into his possession the estate of such decedent and administer the same. Thereupon such sheriff or sergeant, without taking any other oath of office or giving any other bond or security than he may have before taken or given, shall be the administrator, or administrator de bonis non, of the decedent, with his will annexed, if there be a will, and shall be thenceforward entitled to all the rights and bound to perform all the duties of such administrator. The court may, however, at any time afterwards, on reasonable notice to such sheriff or sergeant, revoke such order made by it or its clerk and the court may in a proper case after reasonable notice to the parties in interest permit the sheriff or sergeant to resign and allow any other person to qualify as executor or administrator. When an estate is committed to the sheriff or sergeant on the motion of a creditor or other person, the State tax due for such administration shall be paid by the party upon whose motion the estate was committed and the same shall be repaid to him by the sheriff or sergeant out of the first funds received by him for such estate.

Source: § 64-124.

Note: No change.

§ 64.1-132. Disposition by sheriff or sergeant of property when no person entitled thereto.—If any sheriff or sergeant shall lawfully come into possession of any money or other personal property of any such deceased person whose death shall have occurred after October first, nineteen hundred and forty-six, and no person entitled by law to such money or property is known or can by reasonable diligence be ascertained, such property shall within two years thereafter be sold by such sheriff or sergeant at public

auCTION after posting notices in three or more public places in his county or city for ten days, or in his discretion after advertisement for ten days by one insertion in a newspaper published or having general circulation in such county or city, and the proceeds thereof together with any such money, after the payment of all necessary expenses, shall be paid by such sheriff or sergeant into the State treasury to the credit of the Literary Fund.

Source: § 64-125.

Note: No change.

Article 3.

Appraisement, List of Heirs and Affidavit of Real Estate.

§ 64.1-133. **Appraisement of estate of decedent.**—Every court or clerk by whose order any person is authorized to act as a personal representative shall, if requested by the personal representative or if the court or clerk deem it proper appoint three or more disinterested and competent appraisers who after taking an oath for the purpose shall appraise all property, both real and personal, which is under the supervision and control of the personal representative, and such other property as the personal representative may request. If appraisers are appointed, the personal representative shall request appraisement of all the property of the estate of which he has knowledge. The appraisers shall receive reasonable compensation for their services, the amount thereof to be subject to the approval of the commissioner of accounts. The inventory and appraisement shall be signed by them and returned to the commissioner of accounts of such court, who shall inspect the same, see that it is in proper form and, within ten days after it is received and approved by him, deliver it to the clerk of such court, who shall record the same with the certificate of approval. The date of return of an appraisement shall be entered by the commissioner in his record book. Every such appraisement shall be prima facie evidence of the value of the estate embraced therein for all purposes and that it came to the hands of the personal representative.

Source: § 64-126.

Note: No change.

§ 64.1-134. **List of heirs.**—Every personal representative of a decedent, whether such decedent died testate or intestate, shall, at the time of his qualification, furnish the court or clerk before which or before whom he qualifies and the clerk of court of any city or county wherein deeds are recorded, in which the decedent died seized of any real estate, a list containing his name, with his post-office and street address, if any, and:

(1) The names and, as far as possible, the ages and addresses of the heirs of his decedent, if intestate; or, if his decedent died testate, the names, ages and addresses of those persons who would have been the decedent's heirs had he died intestate; and

(2) The degree of kinship of each to the decedent, accompanied by affidavit that he has made diligent inquiry as to such names, ages and addresses and that he believes such list to be true and correct.

The clerk shall record such list in the will book and index in the name of the decedent as grantor and the heirs as grantees. Such list so made and recorded shall be prima facie evidence of the facts therein stated. The cost of recording such list shall be deemed a part of the cost of administration and be paid out of the estate of the decedent. Such personal representative shall not receive any compensation for his services until such list is filed and recorded, unless he files an affidavit before the commissioner of

accounts that the heirs are unknown to him and that after diligent inquiry he has been unable to ascertain their names, ages or addresses, as the case may be.

Source: § 64-127.

Note: No change.

§ 64.1-135. Affidavit relating to real estate of intestate decedent.—Upon the death intestate of a person owning real estate, any person having an interest therein, including a personal representative if a qualification be had, may execute an affidavit, on a form provided by the clerk of the court, setting forth briefly (1) the real estate owned by the decedent at the time of his death situated within the city or county where such affidavit is to be recorded; (2) the intestacy and (3) the names and last known addresses of the heirs at law. The clerk of the court of the county or city in which deeds are admitted to record and in which such real estate or any part thereof is located, shall, upon the payment of the fees provided by law, record and index the same as wills are recorded and indexed.

The clerk of the court of the county or city where such affidavit is recorded shall transmit an abstract of said affidavit to the commissioner of the revenue of said county or city as in the case of deeds conveying real estate. Upon receipt thereof by said commissioner, such real estate may be transferred upon the land books and assessed in accordance therewith.

Source: § 64-127.1.

Note: No change.

Article 4.

Authority and General Duties.

§ 64.1-136. Powers of executor before qualification.—No person appointed by a will executor thereof shall have the powers of executor until he qualifies as such by taking an oath and giving bond in the court in which or before the clerk by whom the will or an authenticated copy thereof is admitted to record, except that he may provide for the burial of the testator, pay reasonable funeral expenses and preserve the estate from waste.

Source: § 64-128.

Note: No change.

§ 64.1-137. Death of sole executor; his executor has no authority.—The executor of an executor shall have no authority as such to administer the estate of the first testator, but, on the death, resignation or removal of the sole surviving executor of any last will, administration of the estate of the first testator, not already administered, may be granted, with the will annexed, to such person as the court shall think fit to appoint.

Source: § 64-129.

Note: No change.

§ 64.1-138. Effect of marriage of female personal representative.—When an unmarried woman who is a personal representative, either alone or jointly with another, shall marry, her husband shall not be a personal representative in her right and the marriage shall not operate as an extinguishment of her authority.

Source: § 64-130.

Note: Provision that the powers of a female personal representative could be revoked upon the motion of various persons has been deleted.

§ 64.1-139. Duty of every personal representative.—Every personal representative shall administer, well and truly, the whole personal estate of his decedent.

Source: § 64-131.

Note: No change.

§ 64.1-140. Duty of fiduciaries as to joint bank accounts.—Personal representatives, or other fiduciaries charged with the administration of the estate of a decedent shall be under no obligation unless requested in writing by someone in interest to assert a claim on behalf of their decedent's estate to any funds which may, at the time of his death, be on deposit in any bank, trust company, or other depository, in the name of said decedent and one or more other persons when the terms of the contract of deposit, or the laws of the state in which such funds are deposited, permit such bank, trust company or other depository to pay (1) to either of such persons, whether the other, or others, be living or not, or (2) to a named survivor or survivors.

The personal representative, or his attorney, shall acknowledge receipt of such request in writing within ten days of receipt of such notice, and if the personal representative be the same person as the surviving co-tenant of such funds, said personal representative shall segregate such funds, and place same in an interest bearing account, awaiting an appropriate decree concerning the ultimate disposition of same, and said personal representative-co-tenant shall not use such funds for his own personal account.

If the personal representative-co-tenant, accedes to the request that such funds be treated as estate funds, said personal representative may distribute same in accordance with the terms of the will without any decree of Court referred to above.

Source: § 64-131.1.

Note: The second and third paragraphs have been added.

§ 64.1-141. Duties of fiduciaries with respect to certain obligations of the United States.—Personal representatives and other fiduciaries shall be under no obligation unless requested in writing by some one in interest to assert claim to or seek to recover the whole or any part of funds arising from the redemption or payment of bonds of the United States of America, which are paid or payable to others under applicable laws of the United States or rules and regulations of the Treasury Department of the United States made pursuant thereto.

Source: § 64-131.2.

Note: No change.

§ 64.1-142. Exercise of discretionary powers by surviving executors or administrators with the will annexed.—When discretionary powers are conferred upon the executors of any will heretofore or hereafter executed and some but not all of such executors die, resign or become incapable of acting, the executors or executor remaining shall thereafter exercise the discretionary powers given in such will, unless it be expressly provided in such will that the discretionary powers cannot be exercised by any number less than all of the original executors named.

When discretionary powers are conferred upon the executors of any will heretofore or hereafter executed and all of the executors named in

such will die, resign or become incapable of acting, or when there is only one executor named and such sole executor dies, resigns or becomes incapable of acting, then in such event the administrators with the will annexed or administrator with the will annexed appointed by the court shall exercise the discretionary powers vested in the original executors or executor, unless the discretionary powers in such will are by express language limited or restricted to the executors or executor named therein.

Source: § 64-132.

Note: No change.

§ 64.1-143. When personal representative may renew note, etc., of decedent.—In all cases when a decedent is the maker or one of the makers, a surety or one of the sureties or an endorser or one of the endorsers of any note or other obligation for the payment of money, which is due or past due at the death of the decedent, or shall thereafter become due prior to the settlement of the estate of the decedent, the decedent's personal representative may execute as such personal representative a new note, bond or other obligation for the payment of money, in the same capacity as the decedent was obligated, for the same amount or less but not greater than the sum due, principal and interest, on the original obligation, which shall be in lieu of the original obligation of the decedent, whether made payable to the original holder or another. And such representative may renew such note, bond or other obligation for the payment of money from time to time, and such note, bond or other obligation so executed by the personal representative shall be binding upon the estate of decedent to the same extent and in the same manner and with the same effect that the original note, bond or other obligation so executed by the decedent was binding upon his estate; provided, that the time for final payment of the note, bond or other obligation for the payment of money, or any renewal thereof by the personal representative shall not extend beyond a period of two years from the qualification of the original personal representative as such upon the estate of the decedent, except upon the order of a court of competent jurisdiction.

The execution of any note, bond or other obligation for the payment of money by the personal representative mentioned in the first paragraph of this section shall not be held or construed to be binding upon the personal representative personally.

Source: § 64-133.

Note: No change.

§ 64.1-144. Suits upon judgment and contracts of decedent.—A personal representative may sue or be sued upon any judgment for or against or any contract of or with his decedent.

Source: § 64-134.

Note: No change.

§ 64.1-145. For goods carried away, waste, or damage to estate of or by decedent.—An action at law for money damages may be maintained by or against a personal representative for the taking or carrying away of any goods or for the waste or destruction of, or damage to, any estate of or by his decedent.

Source: § 64-135.

Note: Section rewritten for clarity. No substantive changes.

Article 5.

Power with Respect to Real Estate.

§ 64.1-146. **Representatives to sell real estate devised to be sold, and receive certain rents.**—Real estate devised to be sold shall, if no person other than the executors be appointed for the purpose, be sold and conveyed and rents and profits of any real estate which executors are authorized by the will to receive shall be received by the executors who qualify, or the survivor of them. If none qualify, or those qualifying die, resign or are removed before the trust is executed or completed, the administrator with the will annexed shall sell or convey the lands so devised to be sold and receive the proceeds of sale, or the rents and profits aforesaid, as an executor might have done.

Source: § 64-136.

Note: No change.

§ 64.1-147. **Administrator with will annexed may sell real estate.**—When any will heretofore or hereafter executed gives to the executor or executors named therein power to sell the testator's real estate and such executor or executors die, resign or become incapable of acting and an administrator or administrators with the will annexed are appointed, such administrator or administrators with the will annexed may sell such real estate unless it is expressly provided to the contrary in such will.

Source: § 64-137.

Note: No change.

§ 64.1-148. **Representative may execute deed pursuant to written contract of deceased.**—When any deceased person shall have executed and delivered a bona fide written contract of sale, purchase option, or other agreement binding such deceased person, his heirs, personal representatives, or assigns, to convey any real property or interest therein, his personal representatives may, upon full compliance by the purchaser with the terms and conditions of such contract, option or agreement, and upon recordation thereof in the county or city wherein the land is situated, execute a deed and do all things necessary to effect the transfer of title to such real property or interest therein to the purchaser and such transfer shall be as effective as if it had been made by the deceased obligor. Any personal representative, duly qualified in any other state, or in the District of Columbia, upon making oath that the decedent owed no debts in this State and posting bond upon such terms and in such amount as may be fixed by the clerk, but not less than the value of the decedent's interest to be conveyed, may convey under the provisions of this section without ancillary administration.

Source: § 64-138.

Note: No change.

§ 64.1-149. **Validation of certain conveyances by foreign executor.**—Every conveyance of real estate within this State made prior to June thirty, nineteen hundred and sixty, by the executor of a will which, prior to such sale, has been probated according to the laws of another state shall, without the qualification of the executor in this State, be as valid and effectual to pass the title of such real estate as if the executor named in such will and making such conveyance had qualified in this State, in every case in which the will under which the executor acted was duly executed according to the laws of this State as a valid will and confers

upon the executor the power to convey the real estate so conveyed and an authenticated copy of such will has been admitted to probate in this State in the county or city in which the real estate or any part thereof is situated.

Source: § 64-139.

Note: Section updated to eliminate two year hiatus between this section and § 64.1-140.

§ 64.1-150. When similar conveyances in future valid.—Every such conveyance of real estate within this State as is mentioned in the preceding section made on or after June thirty, nineteen hundred and sixty, by such executor shall be likewise valid and effectual to pass the title of such real estate if the conditions set forth in the preceding section are complied with and in addition thereto an ancillary administrator upon the estate of such decedent has been duly appointed and qualified who shall sign and acknowledge the deed by which such real estate is conveyed.

Source: § 64-140.

Note: No change.

§ 64.1-151. To pay over proceeds and rents to persons entitled.—It shall be one of the duties of an executor or administrator, by virtue of his office, and as such embraced by his official bond, faithfully to pay the rents and profits or proceeds of sale of real estate which may lawfully come to his hands, or to the hands of any person for him; to such persons as are entitled thereto.

Source: § 64-141.

Note: No change.

Article 6.

Assets and Debts.

§ 64.1-152. Debtor's appointment.—The appointment of a debtor as executor shall not extinguish the debt.

Source: § 64-142.

Note: No change.

§ 64.1-153. What estate not to be sold.—Unless it be necessary for the payment of funeral expenses, charges of administration or debts, the personal representative shall not sell estate which the will directs not to be sold.

Source: § 64-143.

Note: No change.

§ 64.1-154. What goods personal representative to sell; when and how.—Of the goods not mentioned in the preceding section (§ 64.1-153), the personal representative shall, subject to the provisions of Title 34, sell, as soon as convenient, at public auction or private sale, such as are likely to be impaired in value by keeping, giving a reasonable credit except for small sums, and taking bond with good security.

Source: § 64-144.

Note: Internal section reference has been conformed.

§ 64.1-155. When to sell the other goods.—If the goods so sold be not sufficient to pay the funeral expenses, charges of administration, debts and legacies, the personal representative shall sell at public auction or private sale so much of the other goods and chattels as may be necessary to pay the same, having regard to the privilege of specific legacies and to the provisions of Title 34.

Source: § 64-145.

Note: Provision added giving personal representative power to sell at public auction or private sale.

§ 64.1-156. Estate for another's life, assets.—Any estate for the life of another shall go to the personal representative of the party entitled to the estate and be assets in his hands, and be applied and distributed as the personal estate of such party.

Source: § 64-146.

Note: No change.

§ 64.1-157. Order in which debts of decedents to be paid.—When the assets of the decedent in the hands of his personal representative, after the payment of funeral expenses, not to exceed three hundred dollars, and charges of administration, are not sufficient for the satisfaction of all demands against him, they shall be applied:

First. To debts due the United States;

Second. To claims of physicians, not exceeding seventy-five dollars, for services rendered during the last illness of the decedent; and accounts of druggists, not exceeding the same amount, for articles furnished during the same period; and claims of professional nurses or any other person rendering service as a nurse to the decedent at his request or the request of some member of his immediate family, not exceeding the same amount, for services rendered during the same period; and accounts of hospitals and sanitariums, not exceeding two hundred dollars, for articles furnished and services rendered during the same period;

Third. To debts due this State;

Fourth. To taxes and levies assessed upon the decedent previous to his death and the lien for such taxes shall not be considered as giving priority over the amounts provided in paragraphs first, second and third hereof;

Fifth. To debts due as trustees for persons under disabilities, as receiver or commissioner under decree of court of this State, as personal representative, guardian or committee, when the qualification was in this State, and for moneys collected by anyone to the credit of another and not paid over, regardless of whether or not a bond has been executed for the faithful performance of the duties of the party so collecting such funds;

Sixth. To all other demands, except those in the next class; and

Seventh. To voluntary obligations.

Source: § 64-147.

Note: No change.

§ 64.1-158. Creditors to be paid in order of their classification; class paid ratably; when representative not liable for paying debt of inferior dignity.—No payment shall be made to creditors of any one class

until all those of the preceding class or classes shall be fully paid; and when the assets are not sufficient to pay all the creditors of any one class, the creditors of such class shall be paid ratably; but a personal representative who, after twelve months from his qualification, pays a debt of his decedent, shall not thereby be personally liable for any debt or demand against the decedent of equal or superior dignity, whether it be of record or not, unless before such payment he shall have notice of such debt or demand.

Source: § 64-148.

Note: No change.

§ 64.1-159. Lien acquired in lifetime of decedent not affected.—Nothing contained in the two preceding sections shall affect any lien acquired in the lifetime of the decedent.

Source: § 64-149.

Note: No change.

Article 7.

Apportionment of Estate and Inheritance Taxes.

§ 64.1-160. Definitions.—For the purposes of this article the term “persons interested in the estate” shall include all persons, firms and corporations who may be entitled to receive or who have received any property or interest which is required to be included in the gross estate of the decedent or any benefit whatsoever with respect to any such property or interest, whether under a will or intestacy or by reason of any transfer, trust, estate, interest, right, power or relinquishment of power, taxable under any estate tax law of the United States heretofore or hereafter enacted or under § 58-162.

Source: § 64-150.

Note: No change.

§ 64.1-161. Appointment required.—Whenever it appears upon any settlement of accounts or in any other appropriate action or proceeding that an executor, administrator, curator, trustee or other person acting in a fiduciary capacity has paid an estate tax levied or assessed under the provisions of any estate tax law of the United States heretofore or hereafter enacted or under § 58-162, upon or with respect to any property required to be included in the gross estate of a decedent under the provisions of any such law, the amount of the tax so paid shall be prorated among the persons interested in the estate to whom such property is or may be transferred or to whom any benefit accrues. Such apportionment shall be made in the proportion that the value of the property, interest or benefit of each such person bears to the total value of the property, interests and benefits received by all such persons interested in the estate, except that in making such proration each such person shall have the benefit of any exemptions, deductions and exclusions allowed by such law in respect of such person or the property passing to him; and except that notwithstanding the preceding provisions of this sentence in cases where a trust is created, or other provision made whereby any person is given an interest in income, or an estate for years, or for life, or other temporary interest or estate in any property or fund, the tax on such temporary interest or estate shall be charged against and paid out of the corpus of such property or fund without apportionment between temporary interests or estates and remainders thereafter.

Source: § 64-151.

Note: No change.

§ 64.1-162. Recovery by executor when part of estate not in his hands.—In all cases in which any property required to be included in the gross estate does not come into the possession of the executor, administrator or other fiduciary as such, he shall be entitled, and it shall be his duty, to recover from whomsoever is in possession, or from the persons interested in the estate, the proportionate amount of such tax payable by the persons interested in the estate with which such persons interested in the estate are chargeable under the provisions of this article.

Source: § 64-152.

Note: No change.

§ 64.1-163. Transfers not required until tax ascertained or security given.—No executor, administrator or other person acting in a fiduciary capacity shall be required to transfer, pay over or distribute any fund or property with respect to which a federal estate tax is imposed until the amount of such tax or taxes due from the devisee, legatee, distributee or other person to whom such property is transferred is paid to such fiduciary, or, if the apportionment of tax has not been determined, adequate security is furnished by the transferee for such payment.

Source: § 64-153.

Note: No change.

§ 64.1-164. Application of article to State taxes.—This article shall also apply to State taxes assessed and paid under the provision of § 58-162 which is to the effect that the minimum State tax upon the transfer at death of the estates of resident decedents shall not be less than the federal credit.

Source: § 64-154.

Note: No change.

§ 64.1-165. Contrary provisions of will or other instrument to govern.—But it is expressly provided that the foregoing provisions of this article are subject to the following qualification, that none of such provisions shall in any way impair the right or power of any person by will or by written instrument executed inter vivos to make direction from the payment of such estate or inheritance taxes and to designate the fund or funds or property out of which such payment shall be made; and in every such case the provisions of the will or of such written instrument executed inter vivos shall be given effect to the same extent as if this article had not been enacted.

Source: § 64-155.

Note: No change.

Article 8.

Liability of Representatives; Administrators de Bonis Non.

§ 64.1-166. Transfer of assets to administrator de bonis non; effect thereof.—When the powers of a personal representative have ceased and there be an administrator de bonis non of the decedent's estate, it shall be lawful, with the consent of the court in which or before whose clerk the administrator de bonis non qualified, for the personal representative to pay and deliver to such administrator de bonis non the assets of the decedent, whether converted or not, for which such former personal representative is

responsible; but such consent shall not be given unless the administrator de bonis non shall have given, or shall give, a bond sufficient to cover the additional assets, so to be paid or delivered to him. The administrator de bonis non shall administer the same as assets received in due course of administration and his receipt therefor shall be a voucher in the settlement of the accounts of the former personal representative and shall exempt such personal representative from all liability for the assets so lawfully paid over and delivered. But this section shall not be construed as exempting such former personal representative and his sureties from liability for any breach of duty with respect to such assets committed by him before they were so paid over and delivered by him as aforesaid; nor as authorizing a suit by the administrator de bonis non against such personal representative or his estate to compel the payment and delivery to him of such assets of the decedent as were converted by the representative.

Source: § 64-156.

Note: No change.

§ 64.1-167. Suit against representative of executor in his own wrong, or rightful executor, etc., for waste.—A suit may be maintained against the personal representative of an executor in his own wrong or the personal representative of a rightful executor or administrator by whom any waste may have been committed.

Source: § 64-157.

Note: No change.

§ 64.1-168. When administrator de bonis non may have scire facias.—When a suit is pending or a judgment or decree has been rendered in this State in favor of a personal representative upon a contract made or for a cause of action which accrued in the lifetime of the decedent, the administrator de bonis non of such decedent may sue forth a scire facias to have execution upon such judgment or decree or to revive and prosecute to judgment or decree the suit so pending, if the personal representative who brought it could have maintained the same.

Source: § 64-158.

Note: No change.

§ 64.1-169. When suit may be brought on bond of personal representative.—When an execution on a judgment or decree against a personal representative is returned without being satisfied, there may be forthwith brought and prosecuted an action against the obligors in any bond given by such personal representative for the faithful discharge of his duties.

Source: § 64-159.

Note: No change.

§ 64.1-170. When representative and sureties not chargeable beyond assets; procedure in actions against them.—No personal representative or any surety of his shall be chargeable beyond the assets of the decedent by reason of any omission or mistake in pleading or false pleading of such representative; and in the action allowed by the preceding section the defendants may plead any pleas and offer any evidence which would be admissible in an action against a personal representative suggesting a devastavit.

Source: § 64-160.

Note: No change.

Article 9.

Settlement of Accounts and Distribution.

§ 64.1-171. Proceedings for receiving proof of debts by commissioners.—Any commissioner of accounts shall on motion of the personal representative of a decedent, or any creditor, legatee or distributee of the decedent, appoint a time and place for receiving proof of debts and demands against the decedent or his estate and he shall publish notice thereof once in some newspaper of general circulation in the county or city wherein the fiduciary qualified, the publication of which shall be at least ten days before the date set for the hearing; and at least ten days before the date fixed for the hearing he shall also post a notice of the time and place at the front door of the courthouse of the court of the county or city wherein the fiduciary qualified.

Source: § 64-161.

Note: No change.

§ 64.1-172. Report of debts when and how made.—The commissioner may adjourn from time to time for receiving such proof and shall, within sixty days from the time first appointed for receiving such proof or the last adjournment of any hearing thereon, make out an account of all such debts or demands as may appear to him to be sufficiently proved, stating separately those of each class.

Source: § 64-162.

Note: No change.

§ 64.1-173. How claims filed before commissioners; time within which statutes of limitation not to run.—Any person having any such debt or demand and desiring to prove the same shall file his claim or a written statement thereof before the commissioner, who shall endorse thereon the date of the filing and sign the endorsement in his official character; and the time that elapses between such filing and the termination of the proceedings commenced under § 64.1-171 shall not be computed as a part of the time within which, under any statute or rule of law, it may be necessary, in order to prevent a bar of the claim, to bring any action or institute any proceeding for the recovery or enforcement of such claim.

Source: § 64-163.

Note: Internal section reference has been conformed.

§ 64.1-174. When court to order payment of debts.—When a report of the accounts of any personal representative and of the debts and demands against the decedent's estate shall be confirmed as provided in Chapter 2 of Title 26, the court shall order to be applied to the payment of such debts and demands so much of the estate in the hands of such representative, and to such creditors, as shall appear proper, reserving, when it seems to the court reasonable to do so to meet a claim of a surety for the decedent or any other contingent claim against the estate, the proof of which has to be deferred, or to meet any other claim not finally passed upon, such sum as it may deem sufficient to pay it or a proportion thereof equal to what is ordered to be paid to other creditors of the same class should the payment of it or such proportion afterwards appear proper.

Source: § 64-164.

Note: No change.

§ 64.1-175. How sum reserved on contingent claim to be paid.— Upon any such claim being allowed subsequent to any dividend, there shall be ordered to be paid out of the estate remaining in the hands of the representative or under the control of the court, without regarding any debt of superior dignity for which there may have been no such reservation, the amount of such claim, or a proportion thereof equal to what shall have been paid to other creditors of the same class, if there be enough remaining to pay the same, or such proportion; but the former dividend shall not be disturbed.

Source: § 64-165.

Note: No change.

§ 64.1-176. How assets applied at subsequent dividends.— When at the time of any dividend the whole assets are not distributed or when further assets afterwards come to the hand of the personal representative, if, after paying such proportion as is mentioned in the two preceding sections on any claim allowed subsequent to such dividend, there remain a surplus, it shall be divided among all the creditors who shall have proved debts and demands against the decedent's estate, in the order and proportions in which they may be entitled.

Source: § 64-166.

Note: No change.

§ 64.1-177. When distribution may be required; refunding bond.— A personal representative shall not be compelled to pay any legacy given by the will or make distribution of the estate of his decedent until after six months from the date of the order conferring authority on the first executor or administrator of such decedent and, except when it is otherwise specifically provided, he shall not then be compelled to make such payment or distribution until the legatee or distributee shall give him a bond, executed by himself or some other person, with sufficient surety, with condition to refund a due proportion of any debts or demands which may afterwards appear against the decedent and of the costs attending their recovery. Such bond shall be filed and recorded in the clerk's office of the court which may have decreed such payment or distribution or in which the accounts of such representative may be recorded.

Source: § 64-167.

Note: No change.

§ 64.1-178. When fiduciaries are protected by refunding bonds.— If any personal representative pay any legacy given by the will or distribute any of the estate of his decedent and there be filed in the proper clerk's office a proper refunding bond for what is so paid or distributed, with security therein sufficient at the time of taking it, such personal representative shall not, on account of what is so paid or distributed, be personally liable for any debt or demand against the decedent, whether it be of record or not, unless, within six months from his qualification or before such payment or distribution, he shall have had notice of such debt or demand; but if any creditor of the decedent thereafter establish his debt or demand; but if any creditor of the decedent thereafter establish his debt or demand by judgment or decree therefor or by its being allowed in a commissioner's report which is confirmed, a suit may be maintained on such refunding bond, in the name of the obligee, or his personal representative, for the benefit of such creditor, and a recovery

shall be had thereon to the same extent that would have been had if such obligee or his personal representative had satisfied such debt or demand.

Source: § 64-168.

Note: No change.

§ 64.1-179. Order to creditors to show cause against distribution of estate to legatees or distributees; their liability to refund.—When a report of the accounts of any personal representative and of the debts and demands against his decedent's estate has been filed in the office of a clerk of a court, whether under §§ 64.1-171 and 64.1-172 or in a suit in chancery, the court or the judge in vacation, after six months from the qualification of the personal representative, may, on motion of the personal representative or on motion of a legatee or distributee of his decedent, make an order for the creditors and all other persons interested in the estate of the decedent to show cause on some day to be named in the order against the payment and delivery of the estate of the decedent to his legatees or distributees. A copy of the order shall be published once a week for two successive weeks, in one or more newspapers, as the court directs. On or after the day named in the order the court in term, or the judge in vacation, may order the payment and delivery to the legatees or distributees of the whole or a part of the money and other estate not before distributed, with or without a refunding bond, as it prescribes; but every legatee or distributee to whom any such payment or delivery is made, and his representatives, may, in a suit brought against him within five years afterward, be adjudged to refund a due proportion of any claims enforceable against the decedent or his estate and the costs attending their recovery.

Any such personal representative who has in good faith complied with the provisions of this section and has, in compliance with the order of the court, paid and delivered the money or other estate in his hands to whomsoever the court has adjudged entitled thereto shall be fully protected against the demands of creditors and all other persons.

Source: § 64-169.

Note: Internal section references have been conformed.

§ 64.1-180. Form for notice to show cause under § 64.1-179.—Any notice to show cause published or posted in pursuance of the requirements of § 64.1-179 may be substantially in the form following:

Virginia: In the Court of

the day of

Re:, deceased.

SHOW CAUSE ORDER

It appearing that a report of the accounts of, Personal Representative of the estate of, deceased, and of the debts and demands against (his) (her) estate has been filed in the Clerk's Office, and that six months have elapsed since the qualification, on motion of, (a distributee;) (a legatee;) (the personal representative;) IT IS ORDERED that the creditors of, and all others interested in, the estate do show cause, if any they can, on the day of (before this Court at its courtroom,) (before the Judge of this Court in vacation at,) against the payment and delivery of the Estate of

deceased, to (the distributees) (the legatees) (without requiring refunding bonds,) (with or without refunding bonds as the Court prescribes).

A Copy—Teste:

.....

Clerk

....., p.q.

Source: § 64-170.

Note: Internal section reference has been conformed.

CHAPTER 7.

LIABILITY OF REAL ESTATE TO DEBTS.

§ 64.1-181. Real estate of decedent assets for payment of debts.—

All real estate of any person who may hereafter die, as to which he may die intestate, or which, though he die testate, shall not by his will be charged with or devised subject to the payment of his debts, or which may remain after satisfying the debts with which it may be so charged or subject to which it may be so devised, shall be assets for the payment of the decedent's debts and all lawful demands against his estate, in the order in which the personal estate of a decedent is directed to be applied.

Source: § 64-171.

Note: No change.

§ 64.1-182. How much assets administered.—Such assets, so far as they may be in the hands of the personal representative of the decedent, may be administered by the court in the office whereof there is or may be filed, under Chapter 2 of Title 26, a report of the accounts of such representative, and of the debts and demands against the decedent's estate, or they may, in any case, be administered by a court of equity.

Source: § 64-172.

Note: No change.

§ 64.1-183. When heir or devisee liable for value of real estate; when purchasers not liable; when premature conveyances to become valid.—Any heir or devisee who shall sell and convey any real estate, which by this chapter is made assets, shall be liable to those entitled to be paid out of the assets, for the value thereof, with interest; in such case, the estate conveyed shall not be liable if the conveyance was bona fide, and at the time of such conveyance no suit shall have been commenced for the administration of the assets nor any reports have been filed as aforesaid of the debts and demands of those entitled. But no alienation of such estate, made by an heir or devisee, within one year after the death of the testator or intestate, shall be valid against creditors of such testator or intestate, although no such suit shall have been commenced or report of debts and demands filed within such year, except as provided in § 64.1-184. Any conveyance heretofore or hereafter made within one year after the death of a decedent shall, after the expiration of said year, be valid to all intents and purposes as if made after the expiration of said year, if at the expiration of said year no such suit shall have been commenced.

Source: § 64-173.

Note: Internal section reference has been conformed.

§ 64.1-184. When sale within year valid against creditors; proceeds paid to special commissioner.—Any alienation of such estate made within one year after the death of the testator or intestate shall be valid against creditors of such testator or intestate, if such estate be sold and conveyed under and pursuant to decrees of a court of competent jurisdiction in a proper suit for partition, sale of lands of persons under disability, or other judicial sale, and the net proceeds of sale thereof be paid to a special commissioner appointed by the court for the purpose.

The net proceeds of sale shall be the purchase price for such estate including money, deferred purchase money obligations, and other securities, remaining after the payment of the expenses of sale ordinarily paid by the vendor in sales of such estates and the discharge of such indebtedness and encumbrances for which, by law, such estate is primarily liable.

The net proceeds so paid shall be held by the special commissioner appointed by the court for the purpose, in lieu and in place of such estate subject to the claims of creditors of the testator or intestate in the same manner and to like extent in every respect as such estate would have been if not sold, for a period ending no sooner than one year after the death of the testator or intestate, at which time, if no claim shall have been made or asserted against the net proceeds, they shall be distributed by the special commissioner to those entitled thereto in proportion to the interest of each in such estate; provided that as to any sale made in conformity with the provisions of this section a purchaser of any land so sold shall not be required to see to the application of the purchase money.

The special commissioner who receives and holds such net proceeds shall give such bond as may be required by the court appointing him.

Source: § 64-173.1.

Note: No change.

§ 64.1-185. Heir or devisee liable in equity only; judgment against representative as evidence.—An heir or devisee may be sued in equity by any creditor to whom a claim is due for which the estate descended or devised is liable, or for which the heir or devisee is liable in respect to such estate; and he shall not be liable to an action at law for any matter for which there may be redress by such suit in equity. And any judgment or decree for such claim hereafter rendered against the personal representative of the decedent shall be prima facie evidence of the claim against the heir or devisee in such suit in equity.

Source: § 64-174.

Note: No change.

§ 64.1-186. When suit in equity not to be brought to enforce claim of less than twenty dollars.—No suit in equity shall be brought for the recovery or enforcement of any such claim the principal whereof does not exceed twenty dollars, unless the person liable or whose estate is liable, being a resident of this State, shall have been notified, at least thirty days before the suit was brought, that such suit would be brought if the amount of the claim was not paid within such time.

Source: § 64-175.

Note: No change.

§ 64.1-187. Lien acquired in lifetime of decedent not affected.—This chapter shall not affect any lien, by judgment or otherwise, acquired in the lifetime of the decedent.

Source: § 64-176.

Note: No change.

3. All acts and parts of acts, all sections of the Code of Virginia, and all provisions of municipal charters inconsistent with the provisions of this act are, except as otherwise provided, repealed to the extent of such inconsistency.

4. The repeal of Title 64 effective as of October 1, 1968, shall not affect any act or offense done or committed, or any penalty or forfeiture incurred, or any right established, accrued or accruing on or before such date, or any prosecution, suit or action pending on that date. Except as in this act otherwise provided, neither the repeal of Title 64 of the Code of Virginia nor the enactment of Title 64.1 shall apply to offenses committed prior to October 1, 1968, and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose. For the purposes of this act, an offense was committed prior to October 1, 1968, if any of the essential elements of the offense occurred prior thereto.

5. Whenever in Title 64.1 any of the conditions, requirements, provisions or contents of any section, article or chapter of Title 64 as such title existed prior to October 1, 1968, are transferred in the same or in modified form to a new section, article or chapter of Title 64.1, and whenever any such former section, article or chapter of Title 64 is given a new number in Title 64.1, all references to any such former section, article or chapter of Title 64 appearing elsewhere in the Code of Virginia than in Title 64.1 shall be construed to apply to the new or renumbered section, article or chapter containing such conditions, requirements, provisions or contents or portions thereof.

6. It is the intention of the General Assembly that this act shall be liberally construed to effect the purposes set out herein, and if any clause, sentence, paragraph or section of this act shall ever be declared unconstitutional, it shall be deemed severable, and the remainder of this act shall continue in full force and effect.

7. This act shall become effective on October 1, 1968.

A BILL to amend the Code of Virginia by adding, in Title 26 thereof, a section numbered 26-30.1, to prescribe a maximum schedule of commissions allowable to personal representatives.

Be it enacted by the General Assembly of Virginia :

1. That the Code of Virginia be amended by adding, in Title 26 thereof, a section numbered 26-30.1 as follows :

§ 26-30.1. In fixing the compensation allowable for the administration of a decedent's estate, the commissioner shall, after first taking into consideration the value of the estate, the services rendered, the responsibility assumed and the results obtained, allow a reasonable commission to the personal representative, not to exceed ten percent of the first fifty thousand dollars, four percent of the next fifty thousand dollars, three percent of the next nine hundred thousand dollars, and two percent of the estate in excess of one million dollars. The commission shall be based on the gross value, on the date of death, of such real and personal estate as is received by the personal representative. The commissioner may allow a different rate of commission on the real and personal estate. The commissioner may also allow a commission not to exceed five percent of the value of any additional receipts during the period of administration.

Source: New

Note: This section establishes a maximum fee schedule for personal representatives and establishes the base upon which the commission is computed and the time at which the evaluation of the estate is taken.

A BILL to amend and reenact § 26-34 of the Code of Virginia, relating to effect of confirmation of reports of fiduciaries, so as to relieve personal representative of further duties under certain circumstances.

Be it enacted by the General Assembly of Virginia:

1. That § 26-34 of the Code of Virginia be amended and reenacted as follows:

§ 26-34. Effect of confirmation.—The report, to the extent to which it may be so confirmed by an order of the court or judge upon exceptions filed, or in whole when confirmed by lapse of time without exceptions, as provided in the preceding section, shall be taken to be correct, except *insofar* as it may be surcharged or falsified in a suit in proper time; but no person who was a party to exceptions filed to the report shall bring a suit to surcharge or falsify the report, and in such case the action of the court on the report shall be final as to such party, but may be appealed from as in* suits in equity. *After the report is confirmed by order or by lapse of time without exceptions, where the assets of an estate do not exceed fifty thousand dollars, the personal representative shall be relieved of further duties with respect to such estate.*

Note: The last sentence has been added.

A BILL to amend the Code of Virginia by adding, in Title 26 thereof, a section numbered 26-36.1, to provide a form which may be used by fiduciaries for accounting.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding, in Title 26 thereof, a section numbered 26-36.1 as follows:

§ 26-36.1. Any accounting by a fiduciary may be substantially in the following form:

VIRGINIA:

IN THE CORPORATION COURT FOR THE CITY/COUNTY
CHANCERY
CIRCUIT

OF

IN RE: { (No. of Accounting)
First and Final Accounting
Incomp First Accounting
Ward, and Final Accounting, et.

The undersigned,, qualified as (Admr., Execr., Trustee, Guardian, etc.) in the Clerk's office of theCourt for the City/County of, Virginia, on the day of, 19....., has duly posted bond in the amount of \$..... with as surety thereon, showing all the assets coming into its hands on date of qualification for the estate of said, and the disbursements and distributions made thereof for the period beginning on, 19..... and ending on, 19.....

INVENTORIED ASSETS (or assets on hand as of, 19.....)		\$.....
PRINCIPAL CASH RECEIPTS		\$.....
PRINCIPAL CASH DISBURSEMENTS	\$.....	
INCOME CASH RECEIPTS		\$.....
INCOME CASH DISBURSEMENTS	\$.....	
ASSETS ON HAND AS OF, 19.....	\$.....	
(End of Accounting period)	\$=====	\$=====

Vouchers covering the above disbursements and distributions are submitted herewith.

The undersigned certifies that the foregoing is a true accounting of the Estate of, and that all taxes assessed or assessable against the Estate have been paid or are provided for.

Respectfully submitted,

.....
Administrator
Executor
Trustee
Guardian

Source: New

Note: This section provides a form which may be used for accounting by fiduciaries.

A BILL to amend the Code of Virginia by adding, in Title 58 thereof, a section numbered 58-46.1 relating to copies of inheritance tax returns to be furnished by the State Tax Commissioner.

Be it enacted by the General Assembly of Virginia :

1. That the Code of Virginia be amended by adding, in Title 58 thereof, a section numbered 58-46.1 as follows :

§ 58-46.1.—Notwithstanding the provisions of § 58-46, the State Tax Commissioner shall, upon request, make available a copy of any inheritance tax return to any person who is a beneficiary, legatee, devisee or distributee of or has a pecuniary interest in the estate upon which such return has been made.

Source: New

Note: This exception to § 58-46 appears to be reasonable and sometimes necessary for orderly and proper administration.

